



**Arbitration CAS 2013/A/3389 Virach Chanpanich v. The Football Association of Thailand (FAT), award of 1 July 2014**

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Mark Hovell (United Kingdom); Mr Efraim Barak (Israel)

*Football*

*Elections to the presidency of a national federation*

*CAS power of review*

*Burden of proof of the alleged irregularities and breaches in the electoral process*

*Conditions of improper interference in electoral process*

1. The scope of the submissions in the arbitration and the scope of the arbitration agreement on which the arbitration is based equally define the scope of the powers of a CAS panel, under two distinct perspectives: on the one hand, the submissions to the arbitration define the scope of the mandate actually granted to the panel, and are linked to the prohibition of *ultra petita*; on the other hand, the arbitration agreement sets the extent of the dispute that can be referred to the panel for settlement, so that no submission to arbitration is possible for a dispute not comprised in the scope of the arbitration agreement. As a result, the panel cannot grant anything more, or anything different, than what was claimed; and at the same time it cannot grant what is claimed, if the claim is not contemplated by the agreement to arbitrate.
2. In CAS arbitration, any party wishing to prevail on a disputed issue must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. Such principle has been ordinarily applied in CAS proceedings on the basis of Swiss law (Article 8 of the Swiss Civil Code). As a result, it is for the party claiming that the electoral process at the national federation was affected by “*irregularities and breaches*” to prove the factual basis for the finding of such “*irregularities and breaches*”.
3. No form of interaction in an electoral process between the electoral bodies of an association and the senior staff of that same association can *per se* be considered to amount to “*improper interference*” with the electoral process if the specific type of interaction is specifically foreseen in the association’s electoral code.

## 1. BACKGROUND

### 1.1 The Parties

1. Mr Virach Chanpanich (hereinafter referred to as “Chanpanich” or the “Appellant”) is an individual of Thai nationality, who, on 17 October 2013, stood as a candidate for the election to the position of President of the Football Association of Thailand.
2. The Football Association of Thailand (hereinafter referred to as “FAT” or the “Respondent”) is the national governing body for association football in Thailand. FAT is a private entity established under Thai law, with headquarters in Bangkok, Thailand. It is a member of the Fédération Internationale de Football Association (hereinafter referred to as “FIFA”), of the Asian Football Confederation (hereinafter referred to as “AFC”) and of the ASEAN Football Federation.

### 1.2 The Dispute between the Parties

3. The object of the dispute between the parties is the electoral process which was intended to lead to the election in 2013 of the FAT President, contended by Chanpanich and the incumbent President, Mr Worawi Makudi (hereinafter referred to as “Makudi”; Chanpanich and Makudi are hereinafter referred to as the “Candidates”). Chanpanich disputes the results of the vote held on 17 October 2013, in which Makudi prevailed, alleging the existence of a number of violations in the process, so severe as to flaw the election entirely. FAT holds, on the other hand, that no such violations occurred, and that the results of the vote should stand.
4. The circumstances stated below are a summary of the main relevant facts concerning such dispute, as submitted by the parties in their written pleadings or in the evidence offered in the course of the proceedings<sup>1</sup>. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
5. In 2013 a process was conducted by FAT, under the input and the supervision of FIFA, to adopt new Statutes in line with the FIFA standards. In that framework:
  - i. on 31 March 2013, when a Congress of FAT was held, new draft Statutes were circulated. The approval of the new Statutes was set for a subsequent meeting of the Congress;
  - ii. on 9 August 2013, a new FAT Congress took place. On that occasion the new Statutes of FAT (thereinafter referred to as the “2013 Statutes”) were approved, save as for one provision dealing with the composition of the Congress, whose effect was the reduction of the number of its components having a right to vote. The Congress, in fact, decided

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<sup>1</sup> The documents transmitted to the Panel and referred to in this award contain, in their English translations, various misspellings: they are so many that the Panel could not underscore them with “*sic*” or otherwise. In addition, the Panel notes that the documents (and the parties’ submissions) make reference to various individuals and entities by different spelling of their names, as a result of the transcription of such names from the Thai text into the Latin script and the English language. The Panel shall use in this award the prevailing form of name spelling for each of those individuals and entities.

that such provision “*will be consulted ... and will propose again in two weeks*”. The report dated 14 August 2013 of K., Director of Member Associations and Development Department of FIFA, and a member of the FIFA/AFC delegation which followed the electoral process at FAT (hereinafter referred to as “K.”), reads as follows, with regard to the FAT Congress of 9 August 2013:

‘Background

*The objective of the 9 August 2013 extraordinary congress was to adopt revised FAT statutes that were in line with the FIFA standard statutes. Pursuant to a decision of the FIFA Associations Committee, FAT was required to adopt revised statutes (as well as establish an electoral committee and code) before proceeding to elections – the deadline to complete this process is 30 September 2013. The revised FAT statutes should have been adopted during an FAT extraordinary congress on 15 June 2013; however, the congress did not go ahead due to a court issuing an injunction preventing it from doing so.*

Informal meeting on 8 August 2013

*The day prior to the extraordinary congress (8 August 2013), FAT held an informal meeting where members could ask questions and raise concerns to the FIFA/AFC delegation regarding the statutes revision process to date. The FAT records indicated that there were 23 FAT members in attendance. The media were also in attendance and asked the majority of the questions, including about the new membership composition proposed in the revised FAT statutes as well as the consequences should FAT not resolve to adopt the revised FAT statutes.*

*The FIFA/AFC delegation learned that the opposition held a meeting at the same time as the FAT informal meeting, but at a different location. The FIFA/AFC delegation understands that the opposition discussed the possibility of going to election and also whether they would accept the revised FAT statutes. The opposition did not take a decision to go to election, but they did, as the FIFA/AFC delegation understands, resolve to reject the FAT revised statutes the following day during the FAT congress. The media reported that 132 of 182 FAT members attended this congress.*

FAT Congress 9 August 2013

*On 9 August 2013, and on the way to the FAT headquarters, where the extraordinary congress was to be held, the FIFA/AFC delegation noticed Police were preventing supposed FAT members from entering the premises. The supposed FAT members complained to the FIFA/AFC delegation that they were denied entry. In response, the FIFA/AFC delegation informed them that the delegate list would be checked to ensure the correct members were permitted entry into the congress.*

*Meetings were held prior to the extraordinary congress with the FAT executive committee and the opposition leaders. The FIFA/AFC delegation made it clear to both sides that FAT was bound to implement the FIFA decision. The FIFA/AFC delegation also explained to the opposition in detail the history of the matter, the reason for adopting revised FAT statutes, electoral code and establishing the electoral committee. The meeting was effective in that afterwards the opposition appeared convinced on the merits that it was indeed in the best interests of Thai football to adopt the revised FAT statutes before the election took place. It was also evident that the opposition did not understand that the FAT congress would have the opportunity to elect the FAT electoral committee who would take over running the FAT election under the FAT electoral code once convened.*

*After long discussions, it was agreed in principle with both sides that they would propose to their respective supporters that the revised FAT statutes be adopted with the exception of the membership composition provision (Article 21 of FAT revised statutes) and that another extraordinary congress would be held on*

*23 August 2013 to resolve the membership matter and electoral committee. The FIFA delegates agreed in principle on the basis that any revision to the FAT membership composition stayed within the agreed criteria: manageable numbers, precise, predictable and balanced amongst the major Thai football stakeholders. In particular, the members could consider whether the 30 regional league delegates should be elected or designated based on sporting merit (for example the top 5 from each league) and whether to include interest groups, such as futsal, beach soccer, women's football, referees, players, coaches, youth and fans once established.*

*During the meetings with FAT and the opposition, the AFC delegate oversaw the verification process with assistance from FAT executive committee member, AA., opposition member, [...] and independent legal consultant, [...]. It was agreed by the FAT and the opposition that the delegates' list submitted to the Sport Authority of Thailand (SAT) (requirement for all national sports bodies under Thai law) in January 2013 and that was utilized at the last FAT congress would be the definitive list. This process confirmed that 165 out of a total of 182 FAT members were in attendance.*

#### Congress

*The Congress opened at 3pm. Following a brief opening by the FAT, FIFA was asked to take the floor and address the congress on the FIFA decision that made it mandatory for FAT to adopt the revised FAT statutes prior to the election going ahead, as well as the benefits under the revised statutes as compared to the problems under the FAT statutes currently in force. The FAT President then took the floor and encouraged the members to adopt the revised FAT statutes with the exception of Article 21. The leader of the opposition and FAT Presidential candidate, Virach Chanpanich, also took the floor and supported the adoption of the revised FAT statutes with the exception of Article 21.*

*In particular, the FAT President and leader of the opposition proposed to the members that the congress should resolve that:*

- *the revised FAT statutes are adopted in full with the exception of Article 21 (i.e. the provision concerning the FAT membership);*
- *Article 10 of the revised FAT statutes is adopted but should be amended to include a provision that all Thai Premier league and Division 1 clubs shall upon becoming members of FAT meet the FAT requirements in accordance with Thai law within one year, failing which they would lose their voting rights;*
- *FAT members may consider adapting the membership structure, but shall limit this to deciding:*
  - *whether the 30 regional league delegates shall be elected at regional level or whether they should be designated based on sporting merit (i.e. the top 5 from each of the 6 leagues);*
  - *whether to include other interest groups into the membership (once established);*
  - *in any event, FAT shall ensure that the FAT membership is manageable in terms of numbers, precise, predictable and balanced amongst the major Thai football stakeholders.*
- *another FAT extraordinary congress shall be held on 23 August 2013 to:*
  - *adopt the FAT membership structure under Article 21 of the revised FAT statutes; and*
  - *elect the Chairman, Deputy Chairman and 3 members of the electoral committee; and*
  - *elect the Chairman and two members of the electoral appeals committee.*

*The FAT congress then went to a vote on the above decisions. The results were as follows:*

- *Members in attendance: 165*
- *Members in favour: 133*
- *Members against: 2*

- *Members abstention: 30*

*The congress then closed at approximately 5.10 pm.*

#### Next steps

*The next steps are to:*

- *make the relevant changes to Article 10 of the FAT statutes;*
- *reinforce to FAT and the opposition (if necessary) that they can consider adapting the proposed membership, but that they must stay within the parameters agreed during the congress; and*
- *attend next congress on 23 August 2013 and once the final amendments are adopted and electoral committee elected, ensure FAT convenes an election under the revised statutes as soon as possible.*

#### Conclusion

*The situation of FAT is a central issue in Thailand. The open forum and congress was broadcast live on several Thai channels. The opposition resent and do not trust the current FAT leadership. For this reason, it seems that prior to this mission the opposition overlooked the merits of the revised statutes and establishment of the electoral committee. They simply saw it as a ploy by the current FAT leadership to retain power by ensuring their re-election. Following meetings with the opposition where explanations were given for the need to revise the FAT statutes as well as the establishment of the electoral committee, it was apparent that the opposition understood that this process will only strengthen the governance of Thai football by ensuring certain fundamental principles of FIFA and AFC (i.e. separation of powers, accountability, transparency, etc.) are respected and that FAT elections are run fairly by an independent electoral committee”;*

- iii. on 23 August 2013, a third meeting of the FAT Congress was held, finally approving the 2013 Statutes, including the provision (which became the current Article 22 thereof) dealing with the composition of the Congress<sup>2</sup>. K., again member of the FIFA/AFC delegation so reported, on 26 August 2013, about the FAT Congress of 23 August 2013:

#### “Meetings prior to the FAT Extraordinary Congress on 23 August 2013

*Separate meetings were held with both the current leadership of FAT as well as the opposition before the extraordinary congress opened. Following these meetings both sides agreed in principle that they would maintain the originally proposed membership structure in the FAT statutes with the exception of the way in which the 30 regional league delegates would be designated. Both sides also agreed to meet together before the congress to decide in good faith upon the way in which the members would be designated for the FAT electoral committee and electoral appeals committee.*

*A meeting between the two sides then followed. The incumbent FAT President, Dato’ Worawi Makudi and opposition leader Mr. Virach Chanpanich agreed with each other that they would propose to the FAT congress that the original membership structure be maintained with the only change being that the 30 regional league delegates would be designated based on sporting merit (i.e. the top 5 from each of the 6 leagues). This was as opposed to each regional league conducting elections.*

*Discussions then continued on how the members of the electoral committee should be designated. In the end it was agreed that both sides would get four representatives each for the FAT electoral committee and appeals committee and that they would request the congress to delegate the authority for appoint members to each side’s leadership. In particular, one side would get the chairman and two members of the electoral*

<sup>2</sup> The 2013 Statutes were subsequently registered with the registrar at the Department of Provincial Administration.

*committee as well as one member of the electoral appeals committee. The other side would get the deputy chairman and one member of the electoral committee as well as the chairman and one member of the appeal committee. It was agreed that the opposition would get the chairman of the electoral committee and 2 members as well as a member on the electoral appeal committee [Footnote in the text: “It was also agreed that in the event a member needed to be replaced, the side who appointed the member would choose a replacement. Thus, there was no need to appoint three “substitutes” as envisioned in the FAT electoral code.”].*

*FAT Extraordinary Congress on 23 August 2013*

*The congress opened at 3 pm and the quorum of the congress was 152 out of a total of 182 delegates.*

*The incumbent FAT President informed the FAT congress of the meeting between the two sides earlier that day. He then invited Mr. Virach Chanpanich to take the floor and reiterate the outcomes of this meeting. In particular, both Dato’ Worawi and Mr Chanpanich informed the FAT congress that they endorsed the new membership structure and urged the members to accept it. They also informed the FAT congress about the designation of the electoral committee and electoral appeals committee and urged them to mandate each side to appoint 4 members each. The incumbent President requested the FAT congress to approve the above points.*

*The congress then unanimously decided as follows:*

- *to adopt the amendment to Art. 10 of the FAT statutes as requested during the FAT extraordinary congress on 9 August 2013.*
- *to adopt Art. 21 of the revised FAT statutes as follows:*

*The Congress is composed of 72 delegates. The number of delegates is allocated as follows:*

- *for each of the 18 clubs participating in the Thai Premier League – one delegate with one vote;*
- *for each of the 18 clubs participating in the Thai Division One – one delegate with one vote;*
- *for the clubs participating in the Thai Division Two (Regional Leagues), consisting of 84 teams clubs in six regions, the top five clubs of each of the Regional Leagues (according to the official ranking as at the end of the first half of the current season) shall designate each one delegate, - in total 30 delegates -, each one delegate with one vote;*
- *for the amateur teams clubs playing in Bangkok:*
  - *FAT Cup B, for the two finalists – each one delegate with one vote*
  - *FAT Cup C, for the two finalists – each one delegate with one vote*
  - *FAT Cup D, for the two finalists – each one delegate with one vote.*
- *to mandate the authority to appoint members of the electoral committee and electoral appeals to each side. In particular, that the incumbent leadership and opposition leadership could appoint, respectively:*
  - *the Deputy Chairman and one member of the electoral committee, as well as the Chairman and one member of the electoral appeal committee; and*
  - *the Chairman and two members of the electoral committee, as well as one member of the appeals committee.*
- *to make a minor amendment to the FAT statutes regarding the amount of FAT executive committee meetings that should be held per year in accordance with the requirements of Thai law.*

*In addition to the above, the FAT extraordinary congress discussed the possibility of including interest*

*groups in the congress membership by 2015. This would require further consultation and discussion of the Thai football community though. There was also a discussion about the date of the FAT election. The consensus was that the election process should begin as soon as possible and before registration of the new FAT statutes with the Thai Sports Authority. It was then decided that the election process would begin as soon as the electoral committee and electoral appeals committee was established. Accordingly, the FAT election should be held around the week beginning 7 October 2013.*

*The congress then closed at 3.45 pm.*

### Summary

*In summary, FAT has successfully adopted revised FAT statutes that are in line with the FIFA standard statutes. FAT will soon have established an independent electoral committee and electoral appeals committee who will organize, supervise and be ultimately responsible for the election. Accordingly, an election can now be held under the revised FAT statutes and FAT electoral code [Footnote in the text: “The FAT electoral code was already adopted by the FAT executive committee”.] in accordance with a decision of the FIFA Member Associations Committee. The FIFA Associations Committee also set a deadline of 30 September 2013 for this process to be complete, which will not be possible to achieve. However, we can expect the election to take place the week beginning 7 October 2013”.*

6. In other words, as also explained in K.’s report of 26 August 2013, the FAT Congress of 23 August 2013, in view of the upcoming election to the position of President of FAT, mandated the two Candidates to appoint the members of the Electoral Committee and of the Electoral Appeal Committee (hereinafter referred to as the “Appeal Committee”) to discharge the duties and responsibilities vested in those bodies by the Electoral Code of FAT, drafted on the basis of a FIFA standard electoral code (hereinafter referred to as the “Electoral Code”). Such decision of the FAT Congress was based on an agreement reached on the same day by the Candidates with regard to the appointment of the FAT electoral bodies: under such agreement, Chanpanich would appoint three of the five members of the Electoral Committee and one of the three members of the Appeal Committee, while Makudi, in turn, would appoint two members of the Electoral Committee and two members of the Appeal Committee.
7. On the basis of the mandate granted by the Congress, and in accordance with their agreement, the electoral bodies of FAT were designated to be composed as follows<sup>3</sup>:
  - i. Electoral Committee:
    - L., Chairman, designated by Chanpanich
    - V., Vice-Chairman, designated by Makudi
    - B., member designated by Chanpanich
    - BB., member designated by Chanpanich
    - N., member designated by Makudi

<sup>3</sup> It is to be noted that the designations by Chanpanich mentioned in the text were made as substitutions, following the initial appointment of other members. The point has been confirmed by Chanpanich when heard at the hearing (§ 77(i) below).

- ii. Appeal Committee:
- [...], Chairman, designated by Makudi
  - [...], member designated by Makudi
  - C., member designated by Chanpanich.
8. However, “because of resignations ... due to their personal emergencies”, the two members designated by Makudi to the Appeal Panel were replaced by W., to be its chairman, and O. In that respect, there is a dispute between the parties whether this replacement was made by M. (the FAT Secretary General) or by Makudi, and whether it was made consistently with the procedure agreed by the Candidates. However, as a result of such replacements, the Appeal Committee resulted to be in the following composition:
- W., Chairman
  - O.
  - C.
9. On 17 September 2013, M. addressed a letter to the FAT members eligible to participate in the Congress and vote for the election of the FAT President, as follows:
- “The Congress on 9 August 2013 and 23 August 2013 has agreed and ratified FAT Statutes 2013 (the version revised to comply with the FIFA Standard Statutes).*
- In order to ensure that the operation of FAT complies with FIFA regulations and FAT Statutes 2013 Article 28, the Congress shall convene on Thursday 17 October 2013 14:00 at Vasana Room Golden Tulip Hotel Rama 9 Road Huang-Kwang District Bangkok, with the following agenda:*
1. General announcements to the Congress
  2. Election for FAT Executive Committee
  3. Others (if necessary)
- Please try to attend this Congress by yourself. In case you cannot attend this Congress, please appoint the person who is next in line in your organization as your representative to the Congress by filling out the attached appointment form and submitting the form to FAT prior to 30 September 2013 in order for FAT to gather the list of delegate and submit it to the Sport Authority of Thailand (SAT) in accordance with SAT regulations. Thank you for your cooperation to attend the Congress”.*
10. Again, there is dispute between the parties as to the possibility for M. to send such letter and the attached form for the appointment of delegates, which the Appellant contends having been transmitted without the approval of the Electoral Committee. In addition, it is also disputed whether such communication was sent to, and received by, all of the FAT members eligible to vote for the election of the FAT President.
11. On 7 October 2013, a new letter was sent to the 72 FAT members eligible to vote at the election for the FAT President. Such letter was signed by U., the Secretary of the Electoral Committee. Such letter reads as follows:

*“Topic 1: Regarding the form that FAT General Secretary M. has sent on 17 September 2013, if you have*



*filled it and returned it to FAT, you have then completed all the required paperwork. However, there are still a number of FAT members that have not received the form.*

*Topic 2: The Electoral Committee has mandated FAT General Secretary to send these two forms, which are not in conflict with the form mentioned in Topic 1. These forms are designed to meet the needs of different clubs, since, for some clubs, the presidents will come himself, for some club, the presidents will appoint a representative, and, for some clubs that were registered as business, the owners will come themselves. Please select the form based on your club's need.*

- 1. Form for appointing club's president or his representative*
- or*
- 2. Form for appointing club's owner or his representative*

*The club that has the right to cast vote in this election needs to pick its delegate and fill out only one of the two forms.*

*\*\*\* Please do not send both. Your club needs to be able to answer to the Electoral Committee to who is your club's delegate for the upcoming election \*\*\**

*Please promptly provide the required documents.*

*FAT will still send these documents via mail. This email is sent out for your information. Please reply quickly”.*

12. On 10 October 2013, L., Chairman of the Electoral Committee, sent to Mr Jerome Valcke, Secretary General of FIFA, a letter requesting:

*“... to be clarified in the following matters:*

*Firstly, I would like to be clarified on terms of reference, authority and limitation of Electoral Committee and FAT secretariat office relating with the coming Election.*

*Secondly, FAT secretariat office sent club delegates various documents which are not agreed by Electoral Committee. Therefore we again would like to send the appropriate and equitable one to them. In this case, it may take time to have response from the club delegates. Would you please recommend if it effects to the original date of the elections?*

*Thirdly, Electoral Committee would ask for permission to directly contact to FIFA for better understanding among related organizations due to unsmooth cooperation between FAT secretariat office and Electoral Committee. As we know from FAT secretariat office that they have highest force to do so.*

*Lastly, I would like to be clarified on terms of reference of M., Deputy General Secretary. He is also in the list of election's candidate, would his action be proper to authorize on issued documents from FAT secretariat office?”.*

13. In a letter of 10 October 2013, Mr Valcke answered as follows:

*“1. In regards to the competence of the FAT Electoral Committee, we would like to refer you to art. 3 par. 1 of the FAT Electoral Code, which states that “the electoral committee organizes and supervises the election process and takes all decisions relating to the election”. This would include for instance verifying the FAT delegates for the upcoming FAT election. Furthermore, the role of the secretary as set out in art. 5 par. 3 of the FAT Electoral Code is to take “part in the activities of the electoral committee in a consultative capacity, is responsible for the related logistical matters and takes care of administrative matters”. In accordance with art. 8 of the FAT Electoral Code, “appeals against the electoral committee’s*

*decisions may be lodged with the election appeal committee of FAT". For more specific duties of the FAT Electoral Committee, we kindly refer you to art. 6 of the FAT Electoral Code.*

2. *In regards to whether the Electoral Committee should resend certain documents to FAT members and whether by doing this, the FAT election date would be effected; we would like to point out again that according to art. 3 par. 1 of the FAT Electoral Code, the Electoral Committee is responsible for taking all decisions related to the election. Having said this, according to art. 6 par. 1 let. d of the FAT Electoral Code, the Electoral Committee is responsible for "strictly enforcing the statutory deadlines for elections". Accordingly, while these decisions are solely within the competence of the Electoral Committee, we would recommend that, prior to taking such a decision, consideration is given as to whether by doing so the election deadlines contained in the FAT Statutes and Electoral Code can be respected.*
  3. *In regards to the Electoral Committee's request to have direct contact with FIFA, we would like to inform you that we do not object to this communication method. In fact, it is perfectly normal for communications to be signed by the Chairman of the Electoral Committee or by the secretary under the direction of the Electoral Committee. It is again a matter for the FAT Electoral Committee to decide.*
  4. *In regards to the role of FAT General Secretary, M., we would like to inform you that we have previously been informed by FAT that U. has been appointed as FAT Deputy General Secretary for matters relating to the election process due to the fact that M. is a candidate for an FAT office. From our perspective, this was the correct procedure, as it would prevent any conflict of interest arising from M.'s involvement with the election process".*
14. In a meeting of 14 October 2013<sup>4</sup>, the Electoral Committee decided, with respect to Article 22.2 of the 2013 Statutes (under which "Delegates must belong to the Member they represent and be appointed or elected by the appropriate body of that Member": see § 111 (i) below), the following:
- “(1) *If the Member is a business-registered entity, the delegate shall be the owner of the club or his appointment representative who is also a member of the club as required by Statutes 22.2;*
- (2) *If the Member is not a business-registered entity, the delegate shall be the president of the club or his appointed representative who is also a member of club as required by Statutes 22.2”.*
15. On such basis, the Electoral Committee examined, on 14 October 2013, the documents submitted by the FAT members and found that with respect to seven clubs two forms appointing different delegates had been received. These clubs were:
- Surin City FC
  - Trang FC
  - Phangnga FC
  - Kasem Bundit University Club
  - Pak-Naw-Poh NSRU FC
  - Luk-E-San Thai Airways Club

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<sup>4</sup> The date of 14 October 2013 was confirmed by B. in his deposition. On the other hand, L. and M. declared at the hearing that the decision mentioned in this paragraph was adopted at an earlier date.

• Udonthani FC.

16. As a result of such finding, the Electoral Committee unanimously decided to approve the delegates of 65 clubs and to suspend the voting rights of the seven mentioned clubs. It is disputed between the parties whether this decision was (or was declared to be) final and therefore only open to an appeal to the Appeal Committee, the Electoral Committee having completed its activity (as alleged by the Respondent), or merely interlocutory, with the possibility for the Electoral Committee to conduct further inquiry in order to determine the correct delegate for each clubs (as contended by the Appellant). The resolution of the Electoral Committee announced the *“deprivation of the rights”* of the mentioned seven clubs, *“without prejudice to appeal to the Appeal Commission”*.
17. On 14 October 2013, the Chairman of the Electoral Committee requested that a room at the Congress venue be reserved for a meeting on 16 October 2013. On 15 October 2013, U. answered that no room was available at the requested hour and that *“all 7 clubs who have been suspended shall appeal to the Appeal Committee rather than the EC committee”*.
18. On 15 October 2013, U. transmitted to FIFA a list of the 65 clubs and their designated delegates entitled to vote. In the email to FIFA, U. announced that *“there are eligible 65 voters while suspension 7 votes are made by the EC”*.
19. On 15 October 2013, appeals were filed with the Appeal Committee by six of the seven clubs which had their voting rights suspended: Trang FC, Kasem Bundit University Club, Udonthani FC, Phangnga FC, Luke-E-San Thai Airways Club, Surin City FC. Pak-Naw-Poh NSRU FC did not appeal.
20. As a result, the Appeal Committee was scheduled to meet on 15 October 2013 in the evening. The Appeal Committee, however, decided not to hear those appeals that day. The reason for such decision is disputed: the Appellant indicates that the Appeal Committee had unanimously agreed that a representative from the club filing the appeal had to be present and that the Appeal Committee had to be provided with the Electoral Committee’s written decisions; the Respondent submits that the meeting was cancelled because the Appeal Committee considered that the appeal deadline was of four days and therefore that it was necessary to wait until its expiry before a meeting could take place. In any case, the hearing and the determination of the appeals was postponed<sup>5</sup>.
21. On 15 October 2013, a message under the name of the Chairman of the Electoral Committee was sent to FIFA to complain about U. as follows:  
*“On behalf of the electoral committee, we would like to inform you that any acting by U. to contact Fifa via emails or fax are not approved by the electoral committee. As we have seen the emails which she has sent to*

<sup>5</sup> The report on the decisions issued by the Electoral Committee on 16 October 2013, established by U., on the other hand, refers that the Appeal Committee had invited the Electoral Committee to reconsider the position adopted on 14 October 2013. The point was confirmed at the hearing by B. in his deposition (who referred to a request *“verbally”* made), but found no corroboration in the declarations of the members of the Appeal Committee.

*mentioned person in the election by arbitrary.*

*Therefore, we would like to protect the damage of election and explicit in the election that we have to inform you. We propose she has the conflict of interest and hidden agenda with the candidate”.*

22. On 16 October 2013, the two members of the Appeal Committee appointed by Makudi resigned. More specifically:
  - i. W. tendered a letter of resignation *“for the reason that my position as the President of the Law Society of Thailand makes it inappropriate to hold the position of the Chairman of the Appeal Committee”*;
  - ii. O. resigned indicating that he was *“not able to complete my duty as a member of the Appeal Committee because I had other obligations prior to the appointment”*.
23. As a result of these resignations, two new members of the Appeal Committee were appointed: Y. and X. In this respect, there is a dispute between the parties whether these replacements were made by M. or by Makudi, and whether they were made in accordance with the procedure agreed by the Candidates. However, as a result of such replacements, the Appeal Committee resulted to be in the following composition:
  - Y., Chairman
  - X.
  - C.
24. On 16 October 2013, a new meeting of the Electoral Committee was held to consider the position of the seven clubs who had their voting right suspended, since two delegates for each of them had been appointed. On that occasion:
  - i. with respect to Surin City FC, *“the Committee decided with 3-2 vote to give the voting right to A., club’s owner and general manager, who provided proofs that he is the owner of this business entity and the person who runs the club on the day-to-day basis over CC., club’s president, who appointed DD. as his representative. Due to the lack of original version and contact information, the Committee could not verify the authenticity of the appointment letter from CC., whom was not present at the hearing. The letter from Q., the Chairman of Thai Division II Football League presented by M. to prove CC.’s active involvement in the club was not accepted as evidence because of Q.’s vested interests with Makudi, one of the presidential candidate”*;
  - ii. with respect to Trang FC, *“the Committee decided with 3-2 vote to give the voting right to [...] and [...], board members of the business entity, who appointed G. as the club’s delegate, over S., club’s president, who appointed EE. G. attended the hearing and provided proofs of his official appointment and active involvement. The letter from Q., presented by M., to prove S.’s active involvement with the club was not accepted as evidence for the same reason”*;
  - iii. with respect to Phangnga FC, *“the Committee decided with 3-2 vote to give the right to H., the owner of the club, over FF., club’s president. H., who attended the hearing, provided proof that he is the owner of the business entity and the one managed the club. The letter from Q., presented by M., to prove FF.’s active involvement with the club was insufficient”*;

- iv. with respect to Kasem Bundit University Club, *“the Committee decided to give the right to GG., club’s president, who appointed F. because GG. submitted a document that showed that [...], another person who claimed to be the delegate, has confirmed that GG. is the sole president of the club”*. This decision was also adopted by a majority;
  - v. with respect to Pak-Naw-Pow NSRU FC, *“the Committee decided with 3-2 vote to give the right to AB., club’s owner and president, who appointed [...] as the delegate over [...]. AB., who attended the hearing, provided proof that he is the owner of this business entity and has been the one who funded the club”*;
  - vi. with respect to Luk-E-San Thai Airways Club, *“the Committee decided with 3-2 vote to revoke the right of BC., club’s president, who has previously appointed [...] as the club’s delegate. BC. issued a letter requesting the Committee to waive the previous letter of appointment as well as to revoke the right of WW., another person who claimed to be candidate who also appointed HH. to be his representative. The Committee decided that BC. has the right based on the presented evidence and thus decided to revoke his right”*;
  - vii. with respect to Udonthani FC, the Electoral Committee decided to give *“the right to CD., the club’s president. [...] and [...], owners of the business entity, submitted a letter, the authenticity of which could not be verified, requesting the Committee to waive the previous letter that appoints [...] as the club’s delegate and confirming that CD. will be the delegate for the club”*. This decision was again adopted by a majority.
25. At the same meeting, in addition, decisions were taken with respect to two other clubs, which had requested to change the appointed delegate (mentioned in the list transmitted to FIFA on 15 October 2013). More specifically:
- i. with respect to Nontaburi FC, the previous delegate was replaced by [...]; and
  - ii. with respect to Rayong United FC, the previous delegate was replaced by [...].
26. On 16 October 2013, the members of the Electoral Committee sent a letter to FIFA with regard to *“Overstep action of U. to corrupt and illegal practice in election”*. Such letter has the following content:
- “... all members of EC of FAT would like to deny all the messages since U. has not made or behaved improper actions as stated in such email [mentioned at § 21 above]. The messages are caused U. a serious damaged.*
- To confirm that messages have been sent to you are not correct and irresponsible. We are now investigating who sent this untrue messages to you and cause the damages to U.*
- We would like to confirm that U. has performed her duties according to official procedures and the electoral code”*.
27. In the evening of 16 October 2013, appeals were filed against the decisions taken by the Electoral Committee on the same day with respect to the appointment of delegates concerning Surin City FC, Trang FC, Phangnga FC, Luk-E-San Thai Airways Club, Nontaburi FC and Rayong United FC, *i.e.* of four of the clubs which had initially their votes suspended and of the two clubs who had their delegate replaced by the Electoral Committee on 16 October 2013. No appeal was filed with respect to Kasem Bundit University Club, Udonthani FC and Pak-New-Pow NSRU FC.

28. In the morning of 17 October 2013, the Appeal Committee met to consider those appeals. The Appeal Committee so decided:
  - i. with respect to Luk-E-San Thai Airways Club, to allow it to vote, having HH. as a delegate;
  - ii. with respect to Surin City FC, to grant the right to vote to DD., as a delegate designated by CC.;
  - iii. with respect to Phangnga FC, to grant the right to vote to FF.;
  - iv. with respect to Trang FC, to grant the right to vote to S.;
  - v. with respect to Nontaburi FC, to grant the right to vote to the delegate indicated in the list transmitted to FIFA on 15 October 2013, *i.e.* to II.; and
  - vi. with respect to Rayong United FC, to grant the right to vote to delegate indicated in the list transmitted to FIFA on 15 October 2013, *i.e.* to JJ.
29. The decisions taken by the Appeal Committee on 17 October 2013 were adopted by majority vote (2:1), with the exception of the decision concerning Luk-E-San Thai Airways Club, adopted unanimously (3:0).
30. In the afternoon of 17 October 2013, the FAT Congress met for the election of the FAT President: Makudi obtained 42 votes; Chanpanich 28 votes. After the vote for the President, elections took place for the members of the Executive Committee of FAT.
31. An “*Electoral Report*” established by M. *inter alia* mentions, in the list of the people in attendance, the presence of the following representatives:
  - i. JJ. for Rayong United FC
  - ii. DD. for Surin City FC
  - iii. EE. for Trang FC
  - iv. FF. for Phangnga FC
  - v. HH. for Luk-E-San Thai Airways Club
  - vi. II. for Nontaburi FC
  - vii. JJ. for Rayong United FC, and
  - viii. GG. for Kasem Bundit University Club.
32. The same “*Electoral Report*” so summarizes the discussions at the Congress:
 

“L. ( <i>Electoral Committee Chairman</i> )	<p><i>Explaining the ballot-casting via a video</i></p> <p><i>a. Electoral officers would call one delegate at a time.</i></p> <p><i>b. The call-upon delegate would walk up to the front table, pick up the ballot, walk to the voting booth, mark the ballot, cast the ballot, and walk back to his seat.</i></p>
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*c. The ballot casting process would happen in three rounds: first for President, second for Vice-President, and third for Executive Committee.*

*d. The next delegate would be called upon to pick up the ballot while the previous delegate is voting in order to speed up the electoral process.*

*Virach Changpanich  
(Presidential Candidate)*

*Raised an objection about the electoral procedure (regarding the Appeal Committee's decisions to overturn the previous Electoral Committee's decisions and to let the delegates who Virach deemed illegitimate to enter into the voting room).*

*L. (Electoral Committee  
Chairman)*

*Mr. Virach, if you have a concern about the decision of the Appeal Committee, you have the right to bring the concern directly to the Committee. Electoral Committee has no due authority to overturn the Appeal Committee's decisions.*

*Virach Changpanich  
(Presidential Candidate)*

*There will definitely be a lawsuit regarding who is the legitimate delegate. We should let the court to decide these lawsuits before we proceed with the election.*

*B. (Electoral Committee  
Member)*

*After the Electoral Committee has decided about who are legitimate delegate for Surtin City FC, Phangnga FC, Trang FC, Nontaburi BC, and Rayong United, we deem ourselves as having fulfilling our duties in accordance with the FAT Electoral Code. It is not within our authority to challenge the decisions of the Appeal Committee to give the voting right to HH. for Luk-E-San Club, DD. for Surin City FC, and FF. for Phangnga FC, Thanya Poljit for Trang FC, II. for Nontaburi FC, and JJ. for Rayong United FC.*

*Virach Changpanich  
(Presidential Candidate)*

*I was informed of this prior to making this objection. Still, we cannot proceed with this election prior to court decisions on who are the legitimate delegates.*

*B. (Electoral Committee  
Member)*

*You have to bring this objection to the court. As of right now, I am confident that all people in this room will choose our country over their cronies because this election will profoundly affect Thai football for years to come. Unlike in the past elections when all the delegates have to vote by raising their hands, delegates, in this election, can vote without outside influence inside a voting booth. Right now, I have no due authority to do anything. The individuals that they felt have been denied their due rights should bring this grievance directly to the court. Mr. Virach, please this election goes out and see the result.*

*Virach Changpanich  
(Presidential Candidate)*

*I raise the objection to be conducted in accordance with the Electoral Code. If this is your decision, I will respect it.*

*L. (Electoral Committee  
Chairman)*

*The Chairman calls the delegate one by one to voting booth until all the 72 clubs have voted. At this point, all votes have been casted. Please the Electoral Committee rest for 15 minute prior to ballot-counting process. The Chairman then starts counting ballots for President, Vice-president, and*

*Executive Committee in that order”.*

33. The report of K., dated 20 October 2013, with respect to the FAT Congress of 17 October 2013 reads as follows:

*“16 October 2013*

*Meetings were held with the EC and EAC.*

*The following was discussed:*

- *Actions taken by U.*

*The EC complained that U. had attempted to manipulate certain decisions and did not represent the views of the EC through her earlier communications to FIFA. The FIFA/AFC delegation referred to FIFA’s letter of 10 October 2013, which explained the role of the EC and the committee’s secretary, as well as confirming that it would communicate directly with the EC unless otherwise instructed by the EC. The EC also informed the FIFA/AFC delegation that all of the “damage” created by U. had been resolved except for:*

- *the use of FAT ballot papers; and*
- *the status of 6 FAT club delegates.*

*Both of which are elaborated below.*

- *FAT ballot papers*

*The EC informed the FIFA/AFC delegation that despite several requests to U., the FAT ballot papers had not been provided to them for approval. The EC viewed this as suspicious. The FIFA/AFC requested U. to provide them to the EC immediately.*

*U. provided the ballot papers to the EC as requested. After the EC had reviewed the ballot papers, they requested the FIFA/AFC delegation to direct the EC to use new ballot papers. The FIFA/AFC delegation responded that we could not take such a decision because it was a decision that the EC should make as set out in the FAT electoral code. The EC took note and decided not to approve the ballot papers provided by U. and instead decided to create their own, which were eventually used during the election.*

- *The EAC’s capacity to hear appeals*

*The EAC chairman requested a meeting with the FIFA/AFC delegation. The chairman sought advice on timeframes regarding appeals. The FIFA/AFC delegation referred to art. 12 of the FAT electoral code, which sets out the appeal procedure. In particular, the FIFA/AFC delegation referred to art. 12(2), (3), and (4), which respectively states:*

*Any appeal, with its reasons, shall be sent by registered post or delivered in exchange for confirmation of receipt to the general secretariat of FAT within 4 days of the electoral committee’s decision.*

*Appeals shall be considered by the election appeals committee within 4 days of their receipt by the general secretariat.*

*The decisions of the election appeals committee are final and may not be monitored by any government body.*

*Furthermore, the FIFA/AFC delegation informed the chairman that any appeal needed to be dealt with strictly in accordance with the FAT electoral code.*



• *Delegates of 6 clubs from regional leagues.*

*The EC informed the FIFA/ AFC delegation that they had approved 66 delegates to participate in the election the following day [Footnote in the text: “It should be noted that the FIFA/ AFC delegation were informed by a supporter of Mr. Chanpanich that in order for their side to win the election, they needed the votes of these 6 clubs who were being disputed”]. They also informed the FIFA/ AFC delegation that in regards to the 6 outstanding clubs, they had received two appointment letters appointing different delegates from the same club. The EC informed that FIFA/ AFC delegation that it was difficult to take such a decision since the clubs were informal and amateur and did not have proper statutory framework in place, such as constitution.*

*The issue seemed to be the same for each of the 6 clubs: a dispute over whether the delegate should be appointed by the football club or by the company that owned the club. The EC requested the FIFA/ AFC delegation to take a decision on which delegates should represent each of the 6 clubs during the congress. The FIFA/ AFC delegation informed the EC that it was within the EC’s competence to take this decision. The FIFA/ AFC delegation did inform the EC that in principle the delegate (or his/ her appointment) should be from the football club itself as opposed to the company that owned the club and that the owners of the club could under normal circumstances remove the President (or legal authority) from the football club.*

*At approximately 9 pm on 16 October 2013, the FIFA/ AFC delegation was informed by the EC that they had decided on the 6 delegate cases and they would notify the respective parties in accordance with the FAT electoral code. It was not a unanimous decision; the 3 members appointed by Mr Chanpanich voted in favour of 6 candidates and 2 members appointed by Mr Makudi voted the other way. Soon after, the FIFA/ AFC delegation was contacted by several supporters of Mr Makudi and informed that the decision was “incorrect and politically motivated” and requested our intervention. The FIFA/ AFC delegation informed them that we would not intervene with a decision of the EC. The FIFA/ AFC delegation was then informed that the unsuccessful delegates would appeal these decisions to the EAC. The FIFA/ AFC delegation responded that they could appeal as long it was strictly in accordance with the pertinent provisions of the FAT electoral code.*

17 October 2013

*At approximately 12 pm on 17 October 2013, the FIFA/ AFC delegation along with members of the EC inspected the congress hall. The voting booths, urns and seating arrangements seemed to be in good order. It was also worth noting that the EC had prepared a video presentation that explained the voting procedure. This was very clear and a huge improvement from the FAT election in 2011. The EC unanimously approved the lay out and set up in the congress hall.*

*During the inspection and shortly before the election began, the FIFA/ AFC delegation was informed of the decision of the EAC by U. The EAC decided to overturn the decisions of the EC regarding the 6 voting delegates and decided in favour of the 6 delegates who had appealed. U. informed the FIFA/ AFC delegation that the decision was not unanimous and that the 2 members appointed by Mr Makudi voted against the EC’s decision and that the member appointed by Mr Chanpanich voted the other way.*

*The election began at approximately 3.15 pm. Shortly after the opening, Mr Chanpanich complained to the EC about the decisions taken by EAC and complained that it was “incorrect and politically motivated”. He requested the EC not to recognize the decision. The EC considered and discussed internally and then informed Mr Chanpanich in front of the congress that the majority of the EC “did not agree with the decision of the EAC” but that they did not have the competence not to recognize the decision as set out in the FAT electoral*

*code and that they must proceed accordingly. The EC then proceeded to the elections.*

*The results of the election are attached to this report. The congress then closed at approximately 7.20pm.*

*Following the election, Mr Chanpanich complained to the FIFA/ AFC delegation of the following:*

- *The decision of the EAC. In particular, he again complained that the EAC decisions were “incorrect and politically motivated” and requested us to overturn the decision. The FIFA/ AFC delegation referred to art. 12 of the FAT electoral code, which provides that EC decisions can be appealed to the EAC and decisions of the EAC are final. Mr Chanpanich then responded that he would be seeking legal advice on how to appeal the decision of the EAC.*
- *The composition of the EAC. Mr Chanpanich also complained that his appointed member of the EAC had not been involved with the decision to overturn the decision. The FIFA/ AFC delegation was surprised by this point and immediately discussed with the FAT Secretary General and U. who confirmed that Mr Chanpanich’s member had been involved with the decision, but that one of the EAC members appointed by Mr Makudi had been replaced due to unavailability of another member. We were also informed that one of Mr Chanpanich’s members on the EC had changed throughout the process as well due to unavailability.*
- *The continuous dishonesty and manipulation by U. throughout the electoral process. The FIFA/ AFC delegation informed him that as soon as the electoral committee made us aware of this point, the delegation had not dealt directly with her on matters relating to the EC. However, the EC had since sent a letter to FIFA signed by chairman of behalf of all members of the EC, which stated that the earlier correspondence (which informed FIFA/ AFC of certain acts by U. and requested us not to deal with her) was not “correct” and “irresponsible” and that they were investigating who had sent it since they denied it had come from them.*
- *That one delegate in the congress hall was not the correct person registered by the EC. The FIFA/ AFC delegation was surprised by this remake as it had not been brought up during the congress and reminded Mr Chanpanich that the EC checked the identification of all voters before casting their votes. The FIFA/ AFC delegation informed Mr Chanpanich that he may be mistaken since the EC had not raised this issue during the congress and in any event they allowed all delegates to vote.*
- *That the ballot papers were “rigged” by U. The FIFA/ AFC delegation corrected Mr Chanpanich since we were aware that the EC had decided not to use the ballot papers provided by U. and created their own. The ballot papers issued by the EC were used in the FAT election.*

### Summary

*In short, it was a complicated congress. This should be no surprise as the lead up to the election was both disputed with allegations of a higher level political game [Footnote in the text: “Refer to the recent media articles which allege that the government and opposition were influencing this election”]. Thai football is still very polarized and it was difficult for the FIFA/ AFC delegation to find people that we could trust and could give objective opinions. As a consequence, the FIFA/ AFC delegation was careful not to take any decisions and ensure that all decisions were taken by the EC and/ or EAC who the FAT congress on 23 August 2013 had created for this purpose. The decision that has upset many supporters of Mr Chanpanich was the EAC overturning the decision concerning the delegates of the 6 clubs.*

*The above issue concerning the delegates of the 6 clubs could have been avoided had the clubs had statutes that clearly determine who is the legal authority of the club. Thankfully under the FAT statutes, all FAT member must adopt statutes compliant with FIFA, AFC and FAT by the next election in 2015, failing which the member would lose their voting rights. Accordingly, it is now important to ensure that FAT works on this matter*

*as a priority in order to safeguard the 2015 election from encountering the same issue”.*

34. There is a dispute between the parties as to whether the results of the election were officially proclaimed pursuant to the relevant provisions of the Electoral Code. In any case, they were transmitted to FIFA by U. on the same day. However, the three members of the Electoral Committee appointed by Chanpanich decided not to validate the results of the election. A report sent to the Sport Authority of Thailand (hereinafter referred to as “SAT”), signed by them and dated “October 2013”, confirms this decision. In such report, the three members of the Electoral Committee, after summarizing their criticisms regarding the electoral process, concluded as follows:

*“FAT Electoral Code 2013 Article 24.1 required the Chairman of the Electoral Committee to announce the official result and all Electoral Committee members to draft and sign the minute of the election. However, due to numerous violations of FAT Statutes 2013, FAT Electoral Code 2013, and Thai Civil and Commercial Code, three Electoral members – L., BB., and B. – jointly decided to announce to the media that they would not validate the result of the election in any circumstance. This joint decision rendered the election unfinished and thus the report sent to the Congress and the governmental bodies will not be the official report as required by Article 24. The three Electoral Committee members also called upon FAT Electoral Code Article 20, which gives the Electoral Committee the final say on conflicts regarding the voting ballots, the voting rights, vote count, election reports, and result announcement, and thus void this election and call for a new election”.*

35. On 18 October 2013, M. transmitted to SAT a copy of the letter sent by U. to FIFA on 17 October 2013 with the results of the elections, and asked it to “1. acknowledge the result, 2. validate the result of the election, and 3. proceed accordingly”.
36. On 25 October 2013, SAT informed FAT of the following:
- “1. The SAT has received the result of the election on 17 October 2013 and now requests, in accordance with SAT Statutes, the FAT to submit the report of the election to the SAT within 15 days of the election (31 October 2013).
  2. The SAT requests the FAT, in accordance with FAT Statutes Article 14, to submit the letter validating the election result.
  3. The SAT requests the FAT President, in accordance with FAT Statutes Article 38 and 61, to present a list of candidates for the FAT Secretary General to the Extraordinary Congress, and, with the approval of the Congress, appoint the new General Secretary.
  4. The SAT requests FAT to submit the list of the FAT Executive Committee members in the attached format to the SAT for further verification prior to submitting the list to the Department of Provincial Administration”.
37. On the same day, 25 October, Makudi sent the SAT the requested documents.
38. On 21 November 2013, the three members of the Electoral Committee appointed by Chanpanich transmitted to FIFA an updated copy of the report already sent to SAT in October 2013 (§ 34 above), requesting to be advised “on how we should proceed”.

39. In a letter of 25 November 2013, FIFA answered as follows:

*“... It would appear from your correspondence that you did not receive our letter dated 14 November 2013, which stated that FIFA is not in a position to intervene in this matter as requested since arbitration proceedings at the Court of Arbitration for Sport (CAS) appear to have been initiated.*

*We would also like to remind you that in accordance with art. 8 of the FAT Electoral Code, decisions made by the FAT electoral committee must be recorded in the minutes and signed by the committee chairman and secretary. This article also provides that appeals against decisions of the FAT electoral committee may only be lodged with the FAT election appeals committee whose decisions are final as set out in art. 12 of the FAT Electoral Code. Your correspondence did not provide minutes of the alleged decision to invalidate the election results signed by the committee chairman and secretary, nor did it indicate whether the parties affected by the alleged decision had been notified so that the appeal procedure set out in art. 12 of the FAT Electoral Code could be followed. In fact, and to the contrary, we received a letter dated 17 October 2013 from the FAT electoral committee secretary notifying us of the election results and the new FAT office bearers for the period 2013-2015.*

*In view of the above, please ensure that decisions taken by the FAT electoral committee follow the procedures outlined in art. 8, which would only then allow affected parties to appeal under art. 12 of the FAT Electoral Code”.*

40. On 19 December 2013, the SAT issued a letter as follows:

*“The Sport Authority of Thailand has examined, Ministry of Tourism and Sport, has examined the Report of the Extraordinary General Meeting held on 17<sup>th</sup> October 2013 of the Football Association of Thailand and the List of the Board of Directors of the Football Association of Thailand for the year 2013-2015. It appears that the appointment of the board of directors complies with the Regulations of the Sports Authority of Thailand Vol. 6 on the Control of Association with Main Objectives Directly Related to Sports and Sports Promotion, Article 10, ... and also with the resolution of the extraordinary general meeting held on 17<sup>th</sup> October 2013 of the Football Association of Thailand. The association shall verify the appointment with other applicable laws and the Bangkok registrar before registering the list of the new board of directors with the local registrar ..., according to the Civil and Commercial Code ... Section 85. Upon completion of the aforementioned step, the association shall submit the copy of the certificate of the registration of the appointment of the new board of directors ... to the Sports Authority of Thailand for the purpose of public affairs”.*

## 2. THE ARBITRAL PROCEEDINGS

### 2.1 The CAS Proceedings

41. On 7 November 2013, Chanpanich filed a statement of appeal with the Court of Arbitration for Sport (hereinafter referred to as the “CAS”), pursuant to Article R48 of the Code of Sports-related Arbitration (hereinafter referred to as the “Code”), to challenge the decision of FAT of 17 October 2013 to elect of Makudi as its President. In the statement of appeal, Chanpanich designated Mr Mark A. Hovell as arbitrator.
42. In a letter of 8 November 2013, the CAS Court Office, invited the Appellant, “before proceeding with your appeal, ... to provide ... an arbitration clause” on which the CAS jurisdiction to hear the appeal would be based.

43. After an exchange of letters between the CAS Court Office and the Appellant concerning the CAS Court Office's request to be provided with copy of an arbitration clause, on 21 November 2013, FAT informed the CAS Court Office, through its newly appointed counsel, that "*it accepts the jurisdiction of the Court of Arbitration for Sport in this dispute*". Receipt of such communication was acknowledged by the CAS Court Office on 22 November 2013.
44. In a letter of 2 December 2013, the Respondent appointed Mr Efraim Barak as arbitrator.
45. On 16 December 2013, within the deadline extended as per the parties' agreement, the Appellant submitted his appeal brief, in accordance with Article R51 of the Code, together with 3 appendices, 69 exhibits and 8 videos saved to memory sticks. The exhibits included statements signed by 15 witnesses (comprising Chanpanich himself): Chanpanich, B., L., BB., C., Y., A., G., PP., J., QQ., F., D., E. (3 statements), and I.
46. The appeal brief contained also the request for the following evidentiary measures:

*"6.1 ... that the FAT discloses to Mr Chanpanich the following materials:*

- 6.1.1 recordings (whether in audio, video or documentary form) of any and all meetings of the Electoral Committee and/or the Appeal Committee between 23 August 2013 and 17 October 2013, inclusive (there is evidence that such recordings were made);*
- 6.1.2 any and all letters and/or other documents in which Mr Makudi, M. and/or then members of the FAT executive committee resigned from their positions within the FAT, between 23 August 2013 and 17 October 2013, inclusive;*
- 6.1.3 all letters and/or other documents sent by or on behalf of an FAT 'Member' club to the FAT and/or its representatives, appointing one or more delegates to vote at the elections on 17 October 2013 on behalf of that 'Member' club, between 23 August 2013 and 17 October 2013, inclusive;*
- 6.1.4 all letters and/or other documents sent by or on behalf of the FAT (or an FAT representative) to an FAT 'Member' club (or a representative of such a club), between 23 August 2013 and 17 October 2013, inclusive;*
- 6.1.5 all evidence, written submissions and grounds of appeal submitted to the Electoral Committee and the Appeal Committee in relation to each of the disputes concerning the appropriate delegate permitted to cast a vote on behalf of a FAT 'Member' club in the elections on 17 October 2013; and*
- 6.1.6 copies of any reports or other documents produced by FIFA in relation to the FAT elections on 17 October 2013.*

*6.2. Further, ... that the CAS Panel ... supports and reiterates Mr Chanpanich's request to FIFA and Messrs K. and Z. that:*

- (a) Messrs K. and Z. appear at the hearing of this appeal to provide oral evidence to the Panel; and*
- (b) Messrs K. and Z., and FIFA provide the Panel and the parties with copies of any reports or other documents produced by or for them pursuant to the role of Messrs K. and Z. as FIFA observers at the election;*

*by, for example, writing to K. and Z. and/or FIFA to express its support for Mr Chanpanich's efforts*

*to secure K.'s and Z.'s testimony) and any relevant documentary evidence in their, or FIFA's, custody or control)".*

47. By communication dated 17 January 2014, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Mr Mark A. Hovell and Mr Efraim Barak, arbitrators.
48. On 21 January 2014, the CAS Court Office informed the parties that the Panel had taken "*due note of the Appellant's requests for evidentiary measures*" and that therefore the Respondent was invited:  
  
*"to file, together with its answer (cf. CAS letter of 20 December 2013), a copy of the documents requested at paragraph 6.1 of the appeal brief or to state its specific objections to those requests;*  
  
*to express, also within its answer, its position regarding the request formulated at paragraph 6.2 of the appeal brief*".
49. On 18 February 2014, within the deadline extended by the President of the Panel, the Respondent submitted its answer, in accordance with Article R55 of the Code, together with 33 exhibits (which included some videos) and 21 witness statements signed by: V., RR., Y., SS., TT., P., X., JJ. (personally and on behalf of Rayong United FC), UU., VV., N., R., Q., FF., WW., Mr II., DD., S., W., O.
50. In its answer, in addition, the Respondent addressed several evidentiary issues, as follows:
  - i. the Respondent included in the bundle of exhibits "*the following documents requested for production by the Appellant in his Appeal brief and by the CAS in its fax letter of 21 January 2014:*"
    - i. *The video of the Appeal Committee meeting of 17 October 2013 ...;*
    - ii. *Letters of resignation from the following members of the Executive Committee:*
      - i. *Mr Makudi*
      - ii. *KK.*
      - iii. *LL.*
      - iv. *T.*
      - v. *MM.*
      - vi. *AA.*
      - vii. *DD.*
      - viii. *R.*
      - ix. *P.*
    - iii. *Delegate forms submitted by various clubs;*
    - iv. *Appeal letters submitted to the FAT Appeal Committee on 15 October 2013;*
    - v. *Appeal letters submitted to the FAT Appeal Committee on 16 October 2013";*
  - ii. indicated its intention to call 32 witnesses to be heard at the hearing;

- iii. emphasized, with regard to the witness statement of Y. filed by the Appellant together with the appeal brief (§ 45 above), that Y. had informed FAT *“that he has never been requested to write a written testimony or testify in favour of Mr Chanpanich”* and that, since *“the signature on the aforementioned witness statement is not his”*, he had *“filed a police report in Thailand”* and *“a criminal complaint in Switzerland”*.
51. In a letter of 25 February 2014, the CAS Court Office informed the parties that the Panel had decided, *“in view of the number of witness statements submitted by the parties”*, that a two-day hearing would be held on 25 and 26 March 2014, and that the Panel had issued the following procedural directions:
- “The parties are invited to agree on a common hearing schedule and to submit to the CAS Court Office by fax and within 10 days.*
- The parties are furthermore invited to specify within the same deadline: (i) which of their witnesses will attend the hearing personally or via video conference and (ii) whether they would accept that some of these witnesses be exempted to appear at the hearing.*
- The Panel remains of course free to amend the hearing schedule that will be suggested by the Parties and reminds the parties that, in accordance with Article R44.2 of the CAS Code, applicable by reference of Article R57, with the agreement of the parties, the President of the Panel may exempt a witness from appearing at the hearing and that the Panel may limit or disallow the appearance of any witness or any part of their testimony, on the grounds of irrelevance.*
- The Panel notes that the Respondent submitted witness statements from Messrs K. and Z. and therefore understands: (i) that the Respondent will bring these witnesses at the hearing and (ii) that there is therefore no need to address the Appellant’s request to support its request for the appearance of these witnesses at the hearing, should this understanding not be correct, the parties should inform us accordingly without delay.*
- In view of the documents submitted by the Respondent, the Appellant is invited to indicate, by fax and within a week, whether he maintains his evidentiary request lit. (b) on p. 47 of the appeal brief or if he considers that the documents it initially requested are already in the CAS file”.*
52. On 4 March 2014, the Appellant confirmed that it maintained his requests contained at §§ 6.1.6 and 6.2(b) of his appeal brief (see § 46 above), and insisted that CAS should seek assurances from FAT that Messrs K. and Z. would give evidence at the hearing.
53. In a letter of 6 March 2014, the Respondent indicated that it did not have any report issued by FIFA or the AFC concerning the electoral process.
54. On 10 March 2014, the Appellant, writing with respect to the witness statement of Y. he had filed together with the appeal brief (§ 46 above), applied with the Panel for the authorization to lodge some evidence, including some witness statements, intended to rebut the Respondent’s allegations concerning the authenticity of Y.’s statement (§ 50(iii) above)<sup>6</sup>, as well as a new witness statement, signed by F., describing an attempt to convince him to withdraw the evidence he had already offered in support of Chanpanich in this arbitration. The Appellant also

<sup>6</sup> Witness statements signed by PP., Ms Elisabeth Riley, ZZ., [...], and [...].

requested that the Respondent be directed to assure the presence of Y. at the hearing and not to contact any witnesses giving evidence in support of Chanpanich.

55. On 11 March 2014, a conference call was held between the President of the Panel and the parties' counsel in order to discuss the organization of the hearing.
56. On 13 March 2014, further to the conference call of 11 March 2014, the CAS Court Office, writing on behalf of the President of the Panel, informed the parties as follows:

*"Venue of the hearing"*

*The parties and their witnesses are called to appear at the hearing which will be held on:*

*Tuesday 25 March 2014 and Wednesday 26 March 2014*

...

*Pursuant to Article R44.2 of the Code of Sports-related Arbitration (the "Code") (applicable by reference of Article R57) the parties shall call to be heard by the Panel such witnesses and experts which they have specified in their written submissions. The parties are responsible for the availability and costs of the witnesses and experts to be heard at the hearing.*

*Any party requiring visa assistance in the form of a letter from the CAS should request such a letter without delay.*

*Furthermore, as the language of this arbitration is English, any person requiring the assistance of an interpreter must arrange for the attendance of an independent, non-interested interpreter, retained at the expense of the party requiring the interpreter.*

*As discussed during the conference call, the parties are kindly invited to agree on a provider of simultaneous translation services. Please note that the equipment for simultaneous translation will be at your disposal.*

*Furthermore, a room for around 15 persons will be at each party's disposal during the time of the hearings.*

*Hearing schedule and attendance*

*The hearings will begin at 8:00 am (at the earliest) and will last, as the case may be, until 8:00 pm (at the latest) on each day, with a lunch break at 1:00 pm until 2:00 pm and short breaks during the morning and the afternoon sessions*

*As a result, and as discussed, a time frame a maximum of 8 hours will therefore be at each parties' disposal for opening and/ or closing statements (which could however be substituted for both parties by the filing of post-hearing briefs) as well as for the direct, cross and re-direct examination of witnesses.*

*Taking into account the above-mentioned instructions, as well as the time that should be dedicated to breaks (at least one hour for lunch and one additional hour of breaks per day), the parties are invited to suggest a common hearing schedule by fax and within a week.*

*Each party is furthermore invited, within the same deadline, (i) to submit the list of the witnesses it wishes to examine/ cross-examined (such witnesses being obviously included in the hearing schedule to propose); (ii) to specify from where and how its witnesses will be heard (present in the hearing room, via audio conference, via video conference); (iii) to submit a list of all the persons who will be in attendance specifying their capacity (counsel, party representatives).*

*For the sake of good order, both parties are expressly invited not to contact any of its counter-party's witnesses, except of course for the parties' common witnesses.*



Examination of witnesses

*The questioning of the witnesses will take place as follows:*

- a) The Party who initially presented the witness will first present the testimony (direct examination).*
- b) The opposing Party will then question the witness (cross-examination).*
- c) The Party who initially presented the witness shall subsequently have the opportunity to ask additional questions on the matters raised by the other Party's questioning (re-direct examination).*

*The Panel can intervene at any time during the questioning, be it to question the witness or to eliminate such question it considers irrelevant or immaterial to the outcome of the dispute.*

*Re-direct examination shall be strictly limited to matters arising from cross-examination.*

*Each witness shall be admonished of the obligation to tell the truth under Swiss law and asked to make the following statement:*

*"I solemnly declare that I shall speak the truth, the whole truth and nothing but the truth".*

*The witnesses presented by the Appellant will be heard in the first place, immediately followed by the witnesses of the Respondent. The witnesses who are also the party or the party's representatives shall be heard before the witnesses presented by that party are called to testify. The Panel will decide at the hearing whether the Respondent's representatives who are indicated as witnesses are heard immediately after Mr Chanpanich or at a later moment.*

*A modification of the order of examination of the witnesses might be authorized or directed by the Panel, taking into account the location of the witness and his/her availability.*

*The witnesses who are not the party or party representatives shall not be allowed to attend the hearing, be it before or after their deposition. The witnesses who are the party or party representatives shall be allowed to attend the hearing after their deposition.*

Letters to Messrs K. and XX.

*The parties agree to renounce to the testimony of Z. and requested the CAS to invite Messrs K. and XX. at the hearing. XX. shall be considered as a witness presented by the Respondent. K. is a common witness and shall be examined by the Appellant first, and then by the Respondent. Both parties shall have the possibility to ask additional questions thereafter.*

*Please find attached a copy of the CAS Court Office letter of today to these witnesses.*

Documents submitted by the Appellant on 10 March 2014

*The Respondent is invited to submit ... within one week its comments on the admissibility of the documents submitted by the Appellant on 10 March 2014.*

Appellant's evidentiary request for the production of documents (p. 46 and 47 of the appeal brief)

*In view of the documentation provided with the answer and of the Respondent's letter of 6 March 2014, the Appellant is invited to specify which of his evidentiary requests would still be outstanding.*

Miscellaneous

*Each party is invited to submit a transcript, together with its English translation, of any extract of the produced video upon which he/it intends to rely, by fax and within a week.*

*The Appellant is furthermore invited to submit to the Respondent, without delay, its Appendixes 1 and 2 of the appeal brief, that the Respondent is invited to complete, within a week, with the persons or events that would, according to it, be missing".*

57. In letters of the same 13 March 2014, the CAS Court Office invited XX., from the AFC, and K. to attend, in person or video-audio conference, the hearing set, in order to testify in the pending arbitration.
58. On 14 March 2014, the Appellant indicated, as requested in the CAS letter of even date, the evidentiary requests he maintained:
  - “1. *That the Respondent provides copies of all delegate forms submitted by FAT member clubs, appointing delegates to vote at the elections on 17 October 2013. ...*
  2. *That the Respondent provides all evidence, written submissions and grounds of appeal submitted to the Appeal Committee in relation to each of the disputes concerning the appropriate delegate permitted to cast a vote on behalf of an FAT member club in the elections on 17 October 2013. While the Respondent has provided the one page appeals said to have been submitted by the relevant clubs (see Exhibits R19 and R30), it appears from the description of the Appeal Committee hearings at paragraph 114 of the Respondent’s Answer Brief that many more documents were before the Appeal Committee (including documents provided by the Regional League).*
  3. *That K. and FIFA provide copies of any reports or other documents produced by or for them pursuant to the role of K. as a FIFA observer at the election. In this regard we respectfully ask that CAS write to both K. and FIFA in support of such request”.*
59. In a letter of 14 March 2014, the CAS Court Office, on behalf of the President of the Panel, invited the Respondent to submit, by a given deadline, the documents requested by the Appellant on 13 March 2014 (§ 54 above) or to explain why it could not do so.
60. In another letter of the same 14 March 2014, the CAS Court Office requested K. and FIFA to submit any reports or other document produced pursuant to his role as a FIFA observer at the FAT election.
61. On 14 March 2014, the Respondent answered to the Appellant’s submissions of 10 March 2013 (§ 54 above) regarding the witness statement and the deposition of Y.
62. On 17 March 2014, the CAS Court Office informed the parties that the Panel had decided to include in the file of the arbitration the witness statements, and the accompanying documents, lodged by the Appellant with regard to Y., “*but without prejudice to any decision concerning the relevance of the documents produced*”.
63. On 17 March 2014, the Appellant replied to the Respondent’s letter of 13 March 2014 with respect to Y.
64. On 17 March 2014, FIFA confirmed to CAS the availability of K. to testify, by telephone conference, at the hearing, and transmitted copy of the reports prepared by K. with regard to the FAT election held on 17 October 2013.
65. In a letter dated 17 March 2014, the Respondent answered to the Appellant’s letter of 14 March 2014 (§ 58 above), by submitting some documents and confirming that no other documents were in its possession.

66. In a letter of 18 March 2014, the Appellant stated his position on a number of procedural issues in view of the preparation of the hearing, and more specifically regarding the interpreters, the hearing attendees, the witnesses and hearing schedule, the attendance of a representative of FAT during the testimony of Chanpanich's witnesses, and the video evidence.
67. On 19 March 2014, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (hereinafter referred to as the "Order of Procedure"), which was accepted and countersigned by the parties.
68. In an email of 19 March 2014, XX. informed the CAS of his unavailability to attend the hearing to testify.
69. On 19 March 2014, the CAS Court Office, on behalf of the President of the Panel, informed the parties as follows:

"Venue of the hearing and logistic"

*Please note that the hearing will be held on*

*Tuesday 25 March 2014 and Wednesday 26 March 2014 AT 8 am*

*at the FIBA Headquarters*

*Route Suisse 5, 1295 Mies, Switzerland*

*Please note that breakout's room, material for skype, and in principle video - conference and material for simultaneous translation (with 50 headsets) will be at the parties' disposal, but that the CAS does not bear any responsibility in case of technical difficulties.*

*...Furthermore, I inform you that, as this case and the related testimonies are especially sensitive, the President of the Panel has decided to hire the services of a Court Reporter, from Briault Reporting, Surrey, UK, who will take transcripts of the testimonies. ...*

*Failing an agreement, each party shall come at the hearing with the interpreters he/it will have hired. All interpreters will be duly summoned to tell the truth and one party's interpreters can verify the accuracy of the other party's interpreters.*

Hearing schedule and attendance

*In view of the Respondent's letter of 17 March 2014 and of the Appellant's letter of today, you will find attached, by e-mail, a word document containing a template hearing schedule to be duly completed by the parties. The Appellant shall complete this document and send it by e-mail directly to the Respondent (with the CAS Court Office in copy) by 20 March 2014 at noon, the Respondent should then complete the file sent by the Appellant and return it to the CAS Court Office by 21 March 2014 at noon.*

*Please note that the parties' constraints are the following:*

- *First Appellant's witnesses in an order to be determined by the Appellant, second, Respondent's witnesses in an order to be determined by the Respondent.*
- *Each party mentioned the name of each of its witnesses he/it intends to examine in chief and of his/its counter-party witnesses he/it intends to cross-examine and the time for such examination/cross-examination (5 minutes per witnesses being kept at the Panel's disposal);*
- *Each party mentioned for each of his/its called witnesses, his capacity, how he will be heard (in person, video-conference, telephone and the reference to his witness statement(s)).*

- *Each party mentioned the time needed for his/its submissions.*
- *A 10 minutes break every 2 hours shall be scheduled as well as an at least 1 hour lunch break.*
- *The total of the times that will be indicated by each party cannot exceed 8 hours.*
- *The hearing shall be terminated on 25 and on 26 March 2014 at the very latest at 8 pm and shall start at the earliest at 8 am.*
- *As mentioned in the CAS letter of 13 March 2014, the Panel will decide at the outset of the hearing if Mr Makudi who is indicated as a witness will be heard immediately after Mr Chanpanich or at a later moment.*

*Finally please find attached a copy of the e-mail received today from XX., who is not available to testify at the hearing. ...*

*Appellant's evidentiary request for the production of documents*

*The Respondent is kindly referred to the CAS Court Office letter of 14 March 2014 related to this issue (and sent at 3.35 pm) and is invited to comply with the Panel's order by return".*

70. In a letter of 19 March 2014, the Respondent addressed the pending procedural issues, indicating, *inter alia*, the names of the witnesses it wished to be heard at the hearing. Attached to such letter were also a transcript of a portion of a video already filed as evidence, as well as a list of the relevant individuals and the chronology of the key events, originally prepared by the Appellant, which it had supplement as per a request of the President of the Panel (§ 56 above).
71. Further to some requests for clarification by the Appellant with regard to the hearing schedule, and on behalf of the President of the Panel, on 20 March 2014, the CAS Court Office informed the parties as follows:  
*"The parties' respective estimates as to the length of time they will need questioning witnesses are not binding, but merely indicative. Please however note that the parties are kindly requested not to have excessive departures from the indicated times and that the total of 8 hours is binding;*  
*This total of eight hours will be monitored by the Panel with the assistance of the parties;*  
*The Appellant will be entitled to make amendments to the hearing schedule after receipt of the schedule completed by the Respondent while the Respondent will be entitled to make final amendments after receipt of the Appellant's amendments. Please note that very short deadlines will be granted to the parties to do so and that the parties will in principle not be allowed to call witnesses that would not be mentioned on the schedule".*
72. Additional information in the regard of the hearing was provided on 21 March 2014.
73. On 21 March 2014, a hearing schedule was discussed and submitted by the parties.
74. On 24 March 2014, the CAS Court Office transmitted to the parties a completed text of the hearing schedule. At the same time, the CAS Court Office noted that *"the order of the examination of Mr Makudi is still subject to a decision of the Panel"* and therefore that *"the indication contained in the attached schedule is ... subject to amendment"*.
75. A hearing was held on the days of 25 and 26 March 2014, from 9:00 am to 9:00 pm on the first

day, and from 8:00 am to 1:30 am of 27 March 2014 on the second day.<sup>7</sup> The Panel was assisted by Ms Pauline Pellaux, Counsel to CAS. Prior to the hearing, a meeting between the Panel and the parties' counsel was held to discuss some organizational issues. The following persons, then, attended the hearing:

- i. Chanpanich: Chanpanich, Mr Max Duthie, Ms Elisabeth Riley, Ms Lauren Pagé, counsel, and ZZ.;
- ii. for FAT: Mr Jorge Ibarrola, Ms Natalie St Cyr Clarke and ZZ., counsel, as well as Makudi, as representative of FAT<sup>8</sup>.

76. At the hearing, after the opening statements of the parties, Chanpanich rendered some declaration and answered questions. Then, a total of 26 witnesses (some of them physically present, other via video or phone connection) were heard in direct, cross- and re-direct examination: A., B., C., D., E., F., G., H., I., J., K., L., M., N., O., P., Q., R., S., T., U., V., W., X., Y., and Makudi<sup>9</sup>. Each of the witnesses (with the exception of Y.: § 77 below) who had submitted a written statement confirmed its content.

77. The contents of the respective statements and depositions, which were recorded and transcribed, can be summarised as follows<sup>10</sup>:

- i. Chanpanich rendered some declarations regarding the agreement reached with Makudi with respect to the appointment of the members of the Electoral Committee and of the Appeal Committee and indicated that any appointment made by each of the Candidates needed to be notified to the other and to FIFA, but no approval was necessary. Indeed, he had also modified his original appointments, but had informed Makudi of the changes. In any case, Chanpanich declared that he was not sure whether the FIFA delegation had been informed of the requirement to notify the other candidate of any replacements, since most of the conversation between the Candidates was in Thai. Finally, he confirmed that, based on conversations he had with representatives of the six clubs which had their delegates replaced by the Appeal Committee on 17 October 2013, such clubs would have voted for him, if no replacement had been decided;
- ii. A. declared to be the managing director and an owner of Surin City FC. He stated *inter alia* that after he had been granted the right to vote for Surin City FC by the Electoral

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<sup>7</sup> The hearing was held at the FIBA House in Mies, Geneva on 25 March and on 26 March 2014, until 9:00 pm. It had therefore to be relocated to a Geneva hotel after that moment, where it took place up to its end, due to the unavailability of the original venue.

<sup>8</sup> The attendance of Makudi as representative of FAT was announced in a letter of the Respondent dated 19 March 2014 (§ 70 above). An issue then arose between the parties as to the presence of Makudi in the hearing room during the deposition of the other witnesses. The question was settled by the Panel in the meeting with the parties' counsel before the hearing, and no further issue was thereafter raised.

<sup>9</sup> The examination of such an extraordinary number of witnesses, over the two day hearing, was made possible only to the fairness in which the opposing parties' counsel conducted it, that the Panel desires to underline and commend.

<sup>10</sup> The summary which follows intends to give an indication of only a few points touched at the hearing. The Panel, in fact, considered the entirety of the declarations rendered at the hearing (with the benefit of their *verbatim* transcript) and/or contained in the relevant witness statements.

Committee, he was not informed of the hearing before the Appeal Committee; and that DD<sup>11</sup>. did not have any involvement with Surin City FC. During the examination of A., then, questions were asked about the Thai original of Exhibit 1 to the witness statement he had signed, a portion of which (consisting of a letter of 20 September 2013 issued by the organizing committee of the AIS Regional League II, in reply to the communication sent by Surin City FC on 12 September 2013, notifying the change in the organization of the board of the club), not translated into English, was read out to be the following: *“The Football Association of Thailand would like to confirm to you that holding the rights or the ownership of right of Surin City FC shall still be of CC., the governor of Surin province. The association cannot give you permission as you requested”*<sup>12</sup>. In that respect, A. reiterated that CC. used to be, but no longer is, the President of Surin City FC;

- iii. D., candidate for the position of Vice-President at the FAT election of 17 October 2013, indicated that EE. had no involvement with Trang FC, and confirmed that, at a meeting between the Candidates on 23 August 2013, an agreement had been reached that all replacements in the Electoral Committee and in the Appeal Committee had to be notified to FIFA and the other candidate. On cross-examination, D. indicated that S. used to be the President of Trang FC, whilst the current President is G.;
- iv. B., member of the Electoral Committee, mentioned there was a press conference held on 14 October 2013, at which the decisions adopted that day by the Electoral Committee were announced (as it was unable to have direct communication with the clubs concerned) i.e. the decision to suspend their voting rights. At that press conference, the Electoral Committee indicated that those clubs had to appeal or to submit an application: no specific statement was however made with respect to the body to which those clubs had to appeal. The expectation, however, was that they first contact the Electoral Committee. With respect to the criteria adopted by the Electoral Committee for the identification of the person within a club having the right to vote (or to appoint a delegate), B. confirmed that the key element was the ownership, for those clubs which were registered as business entities: the President would not have the right to vote, if he was not the owner. With regard to the 65 clubs which had submitted only one delegate form, B. confirmed that the members of the Electoral Committee requested M. information about the person mentioned in the delegate form and about the club in question; no check was made whether those delegates were members of the FAT Executive Committee, the role to check that point belonged to M. B. then declared that, at the moment he gave a speech before the vote (see § 32 above), he did not know the reasons of the Appeal Committee’s decision. Finally, he indicated that the letter dated 16 October 2013 (*supra*, § 26) was drafted by U. and that he decided to sign it to help her: he confirmed however his original criticism of U. On cross-examination, B., when asked about the decision of 14 October 2013 to suspend the rights of seven clubs, indicated that *“after the 14<sup>th</sup>, on the 15<sup>th</sup> clubs members telephoned me directly and they claimed that they were*

<sup>11</sup> DD., following a decision of the Appeal Committee of 17 October 2013, was appointed by CC. to vote on behalf of Surin City FC.

<sup>12</sup> Copy of such translation was admitted by the President of the Panel into the file of the arbitration. The Panel finds it unfortunate that the witness did not feel necessary to add the English translation to a document he had filed in Thai together with his statement.

*part of the clubs that were suspended and they wanted the matter to be considered again and also to show their evidence. They did not want to appeal but they wanted to meet the committee ... On the 16<sup>th</sup> we were going to see the venue for the elections so we used that day to reconsider the matter*"; and that those clubs were not told to appeal, because there was no time before the elections for appeal proceedings to be conducted. With respect to the appointment of Makudi as a delegate, B. confirmed that on 14 October 2013 he had asked U. whether Makudi, being the FAT President, could vote, and that U. answered that Makudi had resigned. Finally, B. indicated that no announcement of the results of the election of the FAT President was made;

- v. L., Chairman of the Electoral Committee, on cross-examination, indicated that the decision to suspend the voting rights of seven members was adopted because the Electoral Committee could not contact their delegates: *"after the press conference, the delegates from the seven clubs who claimed to have the right to vote ... contacted B"*. With respect to Makudi, L. indicated that on 14 October 2013 there was a discussion with regard to his possibility to be appointed as a delegate, but that the Electoral Committee was told that Makudi was able to be a delegate;
- vi. K. answered questions about the involvement of M. in the activity of the electoral bodies, and indicated that FIFA had always the impression that U. was doing the administrative work: he could not recall receiving phone calls or emails from M. relating to the Electoral Committees' work. With respect to the replacement of the members of the Electoral Committee and of the Appeal Committee, K. confirmed that the issue was raised, but no decision was taken: the side which had appointed the unavailable member would replace that person. There was no formal requirement. K. confirmed however that most of the discussion, at the time the procedure of appointment was agreed, was in Thai. However, FIFA did not think that either side had to confirm the appointment of the other: maybe there were discussions in Thai as to the notification of the replacements, but that was not FIFA's understanding. With respect to the election, K. stated that its results were announced by the Electoral Committee;
- vii. C., member of the Appeal Committee, rendered declarations regarding the proceedings before the Appeal Committee, and declared that the only documents the Appeal Committee could examine were those submitted by the individual who had filed the appeal, together with a declaration of Q.: the documents examined by the Electoral Committee were not part of the file. No discussion, in addition, took place with respect to the possibility of the members of the FAT Executive Committee to be appointed as delegates. On cross-examination, C. declared that he wanted the appealing persons to be present and explain their reasons, together with the other side, and that he wanted all relevant documents, but that such request was denied because of time constraints;
- viii. E., member of the Thai Senate Standing Committee on sport, explained the meaning of Article 85 of the Civil and Commercial Code of Thailand and the need, under it, to register any changes in the executive committee of entities such as FAT, within 30 days of the change. In that respect, E. confirmed that DPA had indicated that it had not received any letter of resignation of the FAT President or of the members of the Executive Committee, and that the failure to register the resignations meant that they were not effective. On cross-examination, E. confirmed that she had heard that SAT had ratified the FAT

- election, having different views regarding Article 85, and considered that nothing conflicting with the FAT Statutes had occurred;
- ix. F., claiming to be the delegate appointed to vote for Kasem Bundit University Club at the FAT elections of 17 October 2013<sup>13</sup>, confirmed the pressures he had sustained to withdraw the witness statement he had signed for the purposes of this arbitration;
  - x. G. confirmed that, after his right to vote for Trang FC had been confirmed by the Electoral Committee, he learnt that the Appeal Committee had given that right to S., even though in the end the vote was cast by EE.;
  - xi. H. declared to be the owner of Phangnga FC and its manager, adding that he had been appointed by the President of this club as delegate to vote on its behalf. However, on 17 October 2013 he discovered that the Appeal Committee had decided to recognize as delegate FF., the honorary President of Phangnga FC, who, apart for that, has no involvement with the club. On cross-examination, H. declared that on 17 October 2013, the person registered as President of Phangnga FC was FF. He further specified that by 17 October 2013, Phangnga FC had already been registered as a business entity;
  - xii. I., a member of the Executive Committee of FAT until the election held on 17 October 2013, declared that he had learnt about the resignations of the other members only after the election. At the same time, I. stated that, since he needed to travel overseas very often, after the 2011 elections he had only attended one or two meetings of the Executive Committee;
  - xiii. J., technical director of Pak-Naw-Poh NSRU FC, simply confirmed his witness statement and was not asked additional questions;
  - xiv. Makudi<sup>14</sup> confirmed to be the founder and still a member of the Thai football club BEC Tero Sesana. He then answered questions relating to his resignation from the Executive Committee of FAT, confirming that he had resigned on 10 October 2013, in order to be eligible to vote at the upcoming elections, by filling in a resignation form available, and normally used, at FAT, which M. had provided him with. However, he did not know why the other members also resigned on 10 October 2013. Makudi was aware of the duty to register the resignations under Thai law. However, there was time to do that after the elections. Finally, Makudi denied having called [...] to interfere with the deposition of F. in this arbitration, and denied irregularities in the 2011 elections;
  - xv. M. referred to the deliberations of the Electoral Committee of 14 October 2013, confirming, *inter alia*, that the Committee decided to suspend those clubs for which two

<sup>13</sup> In the witness statement dated 9 December 2013 F. gives an account of the events which occurred on 17 October 2013 and of his “attempt” to vote for Kasem Bundit University Club as follows: “... *when I went to the registration table I was told by an FAT official that the delegate listed for KBUC was GG., the president. I have no idea how this came about as the Electoral Committee had determined that I was to be the club delegate. ... I explained to the FAT official at the registration table that GG. would not be attending as he had already appointed me to attend, but he told me that I was not allowed to go into the election room. I found this to be quite unfair, not least because other people were treated differently: ... In the end I called GG. and he came and he voted at the election (I understand that he voted for Mr Chanpanich as president). ... had I not done this, no one would have voted on behalf of KBUC ...*”.

<sup>14</sup> Makudi, as mentioned, appeared at the hearing, and answered questions, not as a witness, but as a representative of the Respondent.



delegate forms had been received, while there was no discussion for the other 65, since *“the criteria for all of these were correct”*. In that connection, M. declared that he remembered the discussions at the Electoral Committee meeting regarding the designation of Makudi as a delegate and his resignation. At the same time, he confirmed having received the resignations by the Executive Committee members in one case on 8 October 2013, and in the other cases on 10 October 2013: however, he did not file those resignations with any authority, but just kept them in the office. The Appeal Committee of 15 October 2013 was cancelled because its chairman *“asked that there needed to be more than one party to be there to make the appeal”*. With respect to the meeting of 16 October 2013, M. indicated that the members of the Electoral Committee apologized to U. for the letter sent to FIFA. On the same evening, he received the appeals against the decisions adopted that day, as well as the resignations of the two members of the Appeal Committee. The two new members were then introduced to him by W., one of those who had resigned. With regard to the Appeal Committee meeting of 17 October 2013, M. confirmed being present, but only as an observer. Finally, M. stated that, after the vote, the results were announced by B. On cross-examination, M. *inter alia* admitted that on 17 September 2013 he had sent out delegate forms without the approval of the Electoral Committee. However, he emphasized that all clubs received them;

- xvi. O., one of the Appeal Committee members who resigned on 16 October 2013, stated that the meeting of the Appeal Committee of 15 October 2013 was postponed, by unanimous decision, because *“there was only one side that had filed the appeals, so it was not able to be considered”*. O. also indicated that he resigned because of his involvement with some court hearings on 17 October 2013: he had accepted the appointment because he had understood that his services were required only on 15 and 16 October 2013; and that nobody asked him to resign. At the same time, O. denied having met C. in the morning of 17 October 2013;
- xvii. N., member of the Electoral Committee, stated that, on 14 October 2013, the Electoral Committee by a unanimous decision resolved to give the voting right to 65 clubs. With respect to the other seven clubs, it was announced that their rights had been suspended, but that they had the right to appeal: his feeling was that the decision of the Electoral Committee was final. During the meeting, there were questions about the appointment as delegates of members of the Executive Committee. However, U. informed the members of the Committee that some of them had resigned. No question was asked with respect to the other delegates appointed: checks were however made to verify whether the delegate was the club’s President or had the authority to represent the club. Finally, N. declared that, after the vote, the result was announced by a member of the Electoral Committee;
- xviii. P., member of the Executive Committee of FAT, answered questions regarding the organization of clubs competing in the regional leagues, by reference to Article 4.1 of the Regulations of the Thai Regional League, Division II. On cross-examination, he confirmed having resigned from the FAT Executive Committee on 8 October, by transmitting a letter he had prepared by himself;
- xix. Q., member of the Executive Committee of FAT and President of the Thai Regional League, Division II, confirmed that he attended the meeting of the Appeal Committee

on 17 October 2013, taking with him some documents that he submitted to the Appeal Committee, also with respect to Surin City FC: he attended because M. asked him to testify at the Appeal Committee's hearing; indeed, he provided documents to the Appeal Committee and not to the Electoral Committee. Q. also stated that CC. was the President of Surin City FC, while A. had no involvement in the "*organizing committee*", and was not registered as a President. In the same way, Q. declared that S. was the President of Trang FC, and that FF. was the President of Phangnga FC. Finally, Q. declared that he did not resign from the Executive Committee of FAT, because he did not vote: he acknowledged that he had been indicated to vote for Kasem Bundit University Club, but refused to vote, being "*on the organising committee*";

- xx. R., member of the Executive Committee of FAT, declared that on 10 October 2013 he resigned from the Executive Committee, but that he did not consult with the other members: it was only his decision. He then filled in a form and transmitted it to the FAT;
- xxi. S. declared to be the President of Trang FC, and that in this capacity he nominated EE., a manager of the club to vote for Trang FC: on the day of the election, in fact, he had other business to attend and could not be personally present for the vote. The declarations of G. that EE. does not belong to Trang FC is "*untrue*". Finally, S. stated that he did not know why the text of the appeal he prepared and filed on 16 October 2013 was identical to the appeals filed by other clubs;
- xxii. T., member of the Executive Committee of FAT, confirmed that he resigned on 10 October 2013: he resigned because he needed to vote in the capacity of owner of the club, Kongkan FC;
- xxiii. U. explained her role as secretary of the Electoral Committee, and referred to the criteria approved by that Committee for the identification of the individual having the right to represent and vote for a club, or to appoint a delegate entitled to vote. She then explained the procedure followed by the Electoral Committee on 14 October 2013 for the examination of the delegate forms submitted by the 72 eligible clubs, and indicated that L. and B. tried to contact the clubs with two forms to find a solution. With respect to 65 clubs there was no discussion: in that regard, the Electoral Committee was informed that Makudi had resigned and no concerns were raised with respect to his appointment as a delegate. In the end, because of time constraints, the Electoral Committee decided to suspend the vote of those clubs, in order to allow the Appeal Committee to decide. At the press conference after the meeting, B. indicated that the suspended clubs could appeal to the Appeal Committee. The day after the meeting she transmitted to FIFA the list of the 65 approved clubs, as per the Electoral Committee's instructions. Later on 14 October 2014, she was contacted by L., who wanted to change the delegate of Rayong United FC: when she refused, he got very angry. When, on 16 October 2013, she got to know of the letter sent to FIFA complaining about her, she asked for clarifications from the Electoral Committee: L. however denied having sent this communication, and asked her to prepare a letter of apologies in English, since they were not able to write in that language. Such letter was then signed on 17 October 2013, before the election. With respect to the events of 17 October 2013, U. confirmed that she attended the meeting of the Appeal Committee to help its members understand the decisions taken by the Electoral Committee, and that there were no complaints regarding the identification of the

delegates at the entrance of the election room. In that regard, U. explained the procedure followed for the casting of the votes and, with respect to Trang FC, she stated that the vote was cast by EE., and that this was allowed by the Electoral Committee, since its members knew, from the examinations they had made on 14 and 16 October 2013 of the documents of Trang FC, that S. had appointed him as the delegate: as a result, a handwritten modification was entered in the list of the people in attendance at the election. After the vote, the Electoral Committee announced the results, which also appeared on a screen; the three members of the Electoral Committee appointed by Chanpanich, then, quickly left the room as soon as the elections were concluded;

- xxiv. V., member of the Electoral Committee, confirmed that on 14 October 2013 the decision on 65 clubs was unanimous; it was also decided to suspend seven clubs, which had to appeal if they wanted to challenge the suspension. On 16 October 2013 there was a meeting of the Electoral Committee scheduled in order to inspect the election room. However, on that occasion the Electoral Committee decided to review the decisions taken with respect to the seven suspended clubs: he voted against because a decision had already been taken. At that meeting he remembered that U. rose an issue concerning a letter sent to FIFA, and that L. denied having written it and asked her to prepare a letter for FIFA that he would sign. V. also declared that, after the votes were counted, B. announced the results. B., then, left after receiving a phone call;
- xxv. W., member of the Appeal Committee, confirmed that on 15 October 2013 the Appeal Committee had resolved not to take any decision on the appeals filed against the determinations of the Electoral Committee of the previous day: the reason was that only one side had filed an appeal and the deadline had not expired yet. W., then, explained his resignation: when he accepted the appointment he did not know that he had to take a decision which could have gone to the detriment of a party; as soon as he realized that, he decided to resign in order to avoid being involved in “sports politics”. Following his resignation, he indicated, upon request of Makudi, the persons suitable to be appointed to the Appeal Committee;
- xxvi. X. declared that he became a member of the Appeal Committee after receiving a phone call from W., who had resigned. X. confirmed that the Appeal Committee, in rendering its decisions on 17 October 2013 on the seven suspended members, followed the principle of granting the vote to the President of the club certified by the organizing committee of the regional league, or to the person appointed by the President: this is what happened with respect to the five appeals which were upheld by majority. In that process, the regional league regulations were taken into consideration. With respect to Rayong United FC and Nontaburi FC, the Appeal Committee based its decisions on the fact that the name of the delegate communicated to FIFA could not be changed;
- xxvii. Y., Chairman of the Appeal Committee, confirmed only the witness statement dated 4 February 2014 filed by the Respondent<sup>15</sup>. With respect to the witness statement dated 14 December 2013, filed by the Appellant, Y. conceded having met lawyers representing Chanpanich, but indicated that he did not certify any written declaration. On the content

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<sup>15</sup> During the deposition of Y., the hearing had to be suspended and relocated to another venue for its continuation. During the break, Y. consented to travel together with the Panel.

of such witness statement, Y. declared he could not remember the circumstances therein reported, and the declarations he had rendered to the lawyers representing Chanpanich. Y. confirmed that W. contacted him to become a member of the Appeal Committee, and that the Appeal Committee decided to give the right to vote to the person certified by the President of the Regional League, Q.

78. During the hearing, *inter alia*,
  - i. an issue arose with respect to the witness statement filed by DD., who did not appear to confirm it and could not be cross-examined by the Respondent. The Panel reserved any decision on the evidentiary value of such witness statement;
  - ii. The Respondent filed a witness statement, signed by ZZ., regarding the meeting with Y. for the discussion, and the contacts with him for the signature, of the witness statement filed by the Appellant on 16 December 2013 (*supra*, § 45).
79. At the conclusion of the hearing, after making closing submissions summarizing their respective cases, the parties expressly stated that they did not have any objection in respect of their right to be heard and to be treated equally in the arbitration proceedings.
80. On 27 March 2014, the Appellant transmitted to the CAS Court Office, with copy to the Respondent, the text of the CAS precedents his counsel had referred to in the closing submissions.
81. In accordance with the Panel's directions given at the conclusion of the hearing and in a letter of the CAS Court Office of 28 March 2014, the parties filed on 2 April 2014 (Appellant) and on 3 April 2014 (Respondent) their respective statements of costs.
82. On 8 April 2014, the Respondent requested the authorization to file a new document pursuant to Article R56 of the Code.
83. On 14 April 2014, the Appellant objected to the granting of such authorization.
84. On 23 April 2014, the CAS Court Office transmitted to the parties the *verbatim* transcript of the depositions at the hearing.
85. In a letter of 24 June 2014, the CAS Court Office informed the parties that the Panel had decided to deny the Respondent's request for an authorization to file additional documents.

## 2.2 The Position of the Parties

86. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Panel, indeed, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

(a) ***The Position of Chanpanich***

87. The statement of appeal filed by Chanpanich contained the following prayers for relief:

*"I request that:*

- a. the decision by The Football Association of Thailand to elect Worawi Makudi as its President be declared invalid and a new election be held, fully in accordance with the FIFA Standard Electoral Code, to determine its President; or*
- b. in the alternative, the decision by The Football Association of Thailand to elect Worawi Makudi as its President be declared invalid and be replaced by a decision electing me, Virach Chanpanich, to the office of President of The Football Association of Thailand.*

*I also request an order that The Football Association of Thailand pays my costs in connection with these proceedings".*

88. In the appeal brief, then, Chanpanich specified the relief sought, requesting that the CAS Panel:

*"7.1.1 upholds his appeal;*

*7.1.2 declares the Decision to be null, void and of no effect;*

*7.1.3 replaces it with a Decision electing him, Virach Chanpanich, to the post of President of the FAT;*

*7.1.4 orders that a new election be held to select the vice-presidents and executive committee members of the FAT; and*

*7.1.5 orders that the FAT pays the costs of the arbitration, and the legal and other costs incurred by Mr Chanpanich in pursuing this appeal.*

*7.2 In the alternative, ....*

*7.2.1 upholds his appeal;*

*7.2.2 declares the Decision to be null, void and of no effect;*

*7.2.3 orders that a new election be held to select the President, vice-presidents and members of the executive committee of the FAT; and*

*7.2.4 orders that the FAT pays the costs of the arbitration, and the legal and other costs incurred by Mr Chanpanich in pursuing this appeal".*

89. With respect to the "alternative" relief, Chanpanich, in addition, requests the CAS Panel to issue directions as to the manner in which such elections are to be held.

90. In his submissions, and in support of his request that the election of Makudi be declared null and void, the Appellant identifies five groups of "irregularities and breaches" affecting the electoral process of FAT. They can be summarized as follows:

- i. "Interference with the electoral process". The Electoral Committee was appointed to organize and supervise the elections. However, a number of senior members of the staff of FAT interfered with the election process, thwarted the Electoral Committee's efforts to

organise and supervise the elections, and tried to manipulate its results, notwithstanding the clear conflict of interest that this gave rise to and the clear breaches of the Electoral Code that this amounted to. More specifically, the Appellant makes reference to M. and U., who, in the “*build-up*” to the elections, and on numerous occasions, improperly interfered with the duties and responsibilities of the Electoral Committee, attempted to mislead it, and purported to exercise powers and take decisions that were explicitly reserved to the Electoral Committee under the Electoral Code. For instance:

- M. and U. refused to provide the Electoral Committee with contact details for each club, forcing it to announce at a press conference its decision to hold a hearing on 16 October 2013 to determine the correct delegate for those clubs who had submitted two forms; M. issued various documents relating to the elections, nominated members of the Appeal Committee, attended the meetings of the Electoral Committee and of the Appeal Committee, gave instructions to U.; U. transmitted to FIFA the list of the 65 approved clubs, indicating that the remaining seven clubs had to file an appeal to the Appeal Committee, notwithstanding the clear different decision of the Electoral Committee; U. did not comply with the request of the Chairman of the Electoral Committee to reserve a hearing room for a new hearing on 16 October 2013, insisting that the clubs had to appeal directly to the Appeal Committee;
- M. had a clear conflict of interest, being himself a candidate adverse to Chanpanich. In the Appellant’s opinion, the letter of FIFA of 10 October 2013 indicated that if M. was to participate in any way in the organisation of the elections, that would give rise to conflict of interest and that was what actually happened, since M. remained involved with the work of the Electoral Committee;

As a result, and in addition, while the Electoral Committee identified seven clubs with two delegates appointed, “*it may be that many more than seven clubs were represented by delegates who should not have been given the right to vote*”, having in mind “*the confusion caused by M. and U. and their improper interference in the election process, the inability of the Electoral Committee to verify many of the photocopied documents, and the steps taken to prevent the Electoral Committee from verifying delegates when they came to vote*”;

- ii. “*Unlawful amendments to the membership of the Appeal Committee*”. The Electoral Committee was called upon to make adjudications in respect of disputes between representatives of certain FAT member clubs as to which of those representatives should exercise the voting right of the club in question. The Electoral Committee rendered its decisions after organizing suitable hearings and inviting all interested parties to attend and participate. Some of those adjudications were subject to appeal before the Appeal Committee. The Appeal Committee overturned all adjudications of the Electoral Committee which were appealed, by decisions that were tainted. The composition of the Appeal Committee was changed twice, with respect to the components to be designated by Makudi, ahead of the hearing of the appeals, in breach of the Electoral Code and the Candidates’ express agreement as to the method for changing the Appeal Committee’s members: indeed, they were made by M. (and not by Makudi) and without notification to Chanpanich;
- iii. “*Absence of basic procedural fairness in the appeal process*”. The Appeal Committee’s decisions

were adopted in secret, with no proper hearing, no parties present, on the basis of limited documentation, without proper paperwork and affected by the interference of senior members of the FAT staff, some of whom had vested interests in the decisions. The Chairman of the Appeal Committee (Y.) even admitted having been appointed to help Makudi;

- iv. “*Voting by ineligible individuals: non-members*”. The relevant regulations set out clearly which individual delegates could exercise the right to vote of the member clubs, and provided at a minimum that the delegate exercising the voting right had to be a member of the club in question. However, nine member clubs had their votes cast by individuals who were not members of those clubs and/or who had no connection with those clubs. None of those votes should have counted. Those clubs were the following:

<i>Club</i>	<i>Voting Delegate – Non-member of the Club</i>
Trang FC	EE.
Nara United	OO.
Nonthaburi FC	II.
Singhtarua FC	NN.
Rayong United FC	JJ.
Luk-E-San Thai Airways	HH.
BEC Tero Sesana	Makudi
Surin City FC	DD.
PTT Rayong	MM.

- v. “*Voting by ineligible individuals: executive committee members*”. Under the relevant regulations, members of the Executive Committee of FAT were precluded from voting at the elections, in order to avoid an obvious conflict of interests. That notwithstanding, nine members of the Executive Committee, including Makudi, voted in the elections: none of those votes should have counted. There is no evidence that those members of the Executive Committee had, conveniently, resigned immediately prior to the elections. On the contrary, there is overwhelming evidence that such resignations had not taken place: for instance, there is evidence that those Executive Committee members were still exercising their executive powers up to and on the day of the elections, and nobody had heard about these resignations, which were also never filed with the competent Thai authorities. Even if they had actually resigned just prior to the election, this would amount to a clear circumvention of the applicable regulations. The nine members of the Executive Committee in question, and the clubs they represented at the vote, were the following:

<i>Club</i>	<i>Voting Delegate – Executive Committee Member</i>
BEC Tero Sesana	Makudi
Surin City FC	DD.
PTT Rayong	MM.
Rachapracha BTU	R.

Bangkok FC	KK.
Chang-Mai FC	LL.
Lampang FC	P.
Kon Kaen FC	T.
Nakhon Ratchasima FC	AA.

91. The Appellant finally contends that it was for the Electoral Committee, under the relevant regulations, to declare the official results of the elections. However, the Electoral Committee declared that the elections have been improperly carried out, and has therefore refused to declare Makudi the winner. The fact that Makudi has claimed victory is irrelevant.

(b) ***The Position of FAT***

92. In its prayers for relief, as indicated in its answer, the Respondent requested the CAS to adjudicate as follows:

- I. *The appeal filed by Virach Chanpanich on 16 December 2013 is dismissed.*
- II. *Virach Chanpanich shall bear all the costs of this arbitration.*
- III. *Virach Chanpanich shall reimburse the Football Association of Thailand for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Panel”.*

93. The Respondent submits, as a preliminary remark, that even assuming that the facts occurred as alleged by the Appellant, Chanpanich “*cannot state with any modicum of certainty that he would have won*”. In fact, the Appellant could call into question the decisions adopted by the Appeal Committee regarding, at most, the delegates of five clubs. As a result, even if the delegates approved by the Electoral Committee had voted in favour of Chanpanich, the result would have been the same.

94. The Respondent, then, addresses the “*irregularities and breaches*” invoked by the Appellant in support of his request to set aside the election of Makudi and concludes “*that the FAT elections which took place on 17 October 2013 were held in full compliance with the applicable rules and that the Appellant’s request to annul them must fully be dismissed*”. More specifically:

- i. with regard to the involvement of M. and U. in the “*affairs*” of the Electoral Committee, the Respondent notes that:
  - in the letter of 10 October 2013, Mr Valcke of FIFA only acknowledged the “potential” conflict of interest of M., and did not state that M.’s involvement was *per se* a conflict of interest;
  - M.’s involvement in the election process was pursuant to Article 5.3 of the Electoral Code and “*limited to logistical matters*”, which included the sending out of delegate forms, the distribution of information to the members of the FAT Congress, as well as to the media and the public, the organisation, in administrative and technical terms, of the FAT Congress for the election of the President;
  - M. “*in no way nominated any appeal committee members*”;



- the allegations regarding the obstructions to the work of the Electoral Committee are unfounded, as the Electoral Committee and the FAT Secretariat were able to contact all 72 clubs in order to verify the delegates;
  - the decisions of the Electoral Committee *“corrected and cured”* any possible inconvenience or confusion created by the transmission of multiple delegates’ forms;
  - U. did not hinder the work of the Electoral Committee. As indicated by the members of the Electoral Committee in a message to Mr Valcke of FIFA, U. *“has not made or breached improper actions”* and *“has performed her duties according to the official procedures and the electoral code”*;
- ii. with regard to the allegedly *“unlawful amendments to the membership”* of the Appeal Committee, the Respondent confirms that the composition of the Electoral Committee and of the Appeal Committee was decided upon by mutual agreement and with the consent of the FIFA delegation. However, such agreement did not entail that any changes to either committee had to be agreed by the other candidate: Makudi was fully entitled to change the candidates that he had the right to appoint *“unilaterally and at his total discretion”*. In addition, the two members finally appointed by Makudi (Y. and X.) had no connection with Makudi, M. had no role in their appointment and this was accepted by the representatives of FIFA and AFC;
- iii. with respect to the alleged *“absence of procedural fairness in the appeal process”*, the Respondent notes the following:
- the decision adopted by the Electoral Committee on 14 October 2013 to confirm the voting rights of 65 clubs and suspend the voting rights of seven other clubs was *“without prejudice to the appeal to the Appeal Committee”*, as recognised by the Electoral Committee itself. In the same way, subject to appeal was the decision of the Electoral Committee adopted on 16 October 2013;
  - six clubs filed appeals against the decisions of the Electoral Committee of 16 October 2013;
  - *“club representatives were contacted to inform them of the impending hearings”*;
  - there was no obligation in the Electoral Code for the Appeal Committee to have a personal hearing: *“procedural fairness does not absolutely necessitate that parties have to be physically present at a hearing including oral testimony”*. Therefore, procedural fairness was not violated when the Appeal Committee examined the documents scrutinized by the Electoral Committee and the documents submitted through the FAT Secretary General;
  - the six clubs which filed an appeal belong to the Thai Regional League and Q., who certified the position of the individuals applying to be recognized as delegates, is the President of the Regional League;
- iv. with respect to the alleged *“voting by ineligible individuals: non-members”*, the Respondent notes that on 14 October 2013 the Electoral Committee had approved the names of 65 delegates, which were transmitted the following day to FIFA. Therefore, the 65 names present on that list were deemed by all members of the Electoral Committee to be

acceptable delegates of the eligible clubs. Three delegates were then approved by the Appeal Committee and the Electoral Committee decided to proceed with the vote, and no objection was made or recorded with respect to the voting by those delegates;

- v. with respect to the alleged *“voting by ineligible individuals: Executive Committee members”*, in the same way, the Respondent submits that the names of the nine individuals in question were either included in the list transmitted to FIFA on 15 October 2013 or approved by the Appeal Committee, without any question on the point having been raised. In addition, and in any case, those individuals were only *“former”* Executive Committee members, as they had resigned prior to the election.
95. Finally, the Respondent alleges a *“possible lack of standing”* for Chanpanich. In the Respondent’s opinion, as a result of the fraudulent use of Y.’s signature and the subsequent criminal complaint, Chanpanich will possibly face criminal actions. As a result, he would be absolutely unsuitable as the President of a national football association, since Article 33(3)(3) of the FAT Statutes states that members of the Executive Committee must *“not have been previously found guilty of a criminal offence”*. Therefore, in the event that Chanpanich faces criminal sanctions in either Thailand or Switzerland, he will not be eligible to hold the office of FAT President.

### 3. LEGAL ANALYSIS

#### 3.1 Jurisdiction

96. Article R47 of the Code states that *“an appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement ...”*.
97. Therefore, in order for the CAS to have jurisdiction to hear an appeal, either the statutes or regulations of the sports federation from whose decision the appeal is being made expressly recognise the CAS as an arbitral body of appeal, or a specific arbitration agreement referring to CAS has been concluded between the parties.
98. In order to establish the CAS jurisdiction, the Appellant invoked Article 66 of the 2013 Statutes, which reads as follows;
- “1. *The FAT may have to establish an Arbitration Tribunal, which deals with all disputes between the FAT, its Members ... [and] Officials .... The Executive Committee shall draw up special regulations regarding the composition, jurisdiction and procedural rules of this Arbitration Tribunal.*
  - 2. *In case the FAT has not established the Arbitration Tribunal in accordance with regulations and Statutes of FAT, ... the jurisdiction to decide the dispute will belong to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland provided that such dispute is outside ordinary court’s jurisdiction and does not violate Thai law”*.
99. The Appellant submitted that FAT has not established the arbitration tribunal contemplated by Article 66.1 of the 2013 Statutes. As a result, in the Appellant’s opinion, CAS has jurisdiction pursuant to Article 66.2 of the 2013 Statutes.

100. This Panel, however, does not need to verify whether the arbitration tribunal contemplated by Article 66.1 of the 2013 Statutes has been established. In fact, in a letter dated 21 November 2013, FAT, writing through its counsel, confirmed that *“it accepts the jurisdiction of the Court of Arbitration for Sport in this dispute, in accordance with article 66(2) of its statutes”*, and indicated that *“it follows from the foregoing that any possible doubt about the CAS jurisdiction is now definitively resolved”*. In other words, and in any case, *“a specific arbitration agreement referring to CAS has been concluded between the parties”* for the purposes of Article R47 of the Code.
101. The Respondent, however, contends that the CAS jurisdiction is limited to the requests submitted by the Appellant, i.e. to the issue of the election of Makudi on 17 October 2013 and more exactly to *“the question of whether the FAT elections which took place on 17 October 2013 were held in accordance with the FAT Statutes and FAT Electoral Code”*. In light of this, FAT submits that the CAS jurisdiction does not *“include any issue relating to the adoption of the FAT’s Statutes or any decision issued by the FAT Electoral Committee or Appeal Committee”*. In the Respondent’s opinion, in fact, *“nothing in the FAT Statutes permits the review of the Statutes by the CAS”*, and, according to Article 12.4 of the Electoral Code, the decisions of the Appeal Committee cannot be challenged.
102. In the Panel’s opinion, the Respondent’s contention involves two different aspects: the first relates to the scope of the submissions to this arbitration; the second regards the scope of the arbitration agreement on which this arbitration is based. Such two aspects, in fact, however equally defining the scope of the powers of this Panel, refer to two distinct perspectives: on the one hand, the submissions to the arbitration define the scope of the mandate actually granted to the arbitrators, and is linked to the prohibition of *ultra petita*; on the other hand, the arbitration agreement sets the extent of the dispute that can be referred to the arbitrators for settlement, so that no submission to arbitration is possible for a dispute not comprised in the scope of the arbitration agreement. As a result, the arbitrators cannot grant anything more, or anything different, than what was claimed; and at the same time cannot grant what is claimed, if the claim is not contemplated by the agreement to arbitrate.
103. In light of the foregoing, the Panel agrees with the Respondent that this Panel’s mandate is limited to the requests submitted by the Appellant: i.e., as the Respondent puts it, to *“the question of whether the FAT elections which took place on 17 October 2013 were held in accordance with the FAT Statutes and FAT Electoral Code”*. At the same time, however, the Panel does not find that such requests fall outside the *“specific arbitration agreement referring to CAS ... concluded between the parties”* for the purposes of Article R47 of the Code. In the letter of 21 November 2013, in fact, the Respondent accepted the CAS jurisdiction *“in this dispute”*, and *“this dispute”* concerns in its entirety the electoral process which conducted, on 17 October 2013, to the election of Makudi as President of FAT, irrespective of the specific limitations which are contained in the FAT regulations with respect to the possibility to challenge the individual steps (such as the decisions of the Appeal Committee) which constitute the overall electoral process.
104. As a result, the Panel confirms that it has jurisdiction to hear the appeal filed by Chanpanich and adjudicate on the dispute relating to the election of the FAT President.

### 3.2 Appeal Proceedings

105. As these proceedings involve an appeal against the electoral process which conducted to the election of Makudi as President of FAT, brought on the basis of “*a specific arbitration agreement referring to CAS ... concluded between the parties*”, they are considered and treated as appeal arbitration proceedings in non-disciplinary cases, in the meaning and for the purposes of the Code.

### 3.3 Admissibility

106. The statement of appeal was filed within the deadline set in Article R49 of the Code, counted from the day of the election of Makudi as FAT President. No further internal recourse against such election is available to the Appellant within the structure of FAT. Accordingly, the appeal is admissible.
107. Contrary to this conclusion, it is not possible to invoke<sup>16</sup> a possible lack of standing of the Appellant:
- i. Makudi, even though not himself a club’s representative or a delegate wishing to exercise a right to vote for one of the FAT members which was eventually granted to another delegate, has a direct and personal stake in the outcome of the dispute heard in this arbitration, which touches upon the legal relation between a candidate to the position of FAT President and the FAT, having adverse legal interests. Indeed, the specific condition of a candidate is recognized by the 2013 Statutes, which at Article 2, include the “*candidates for all the FAT positions*” in the definition of an “*Official*”;
  - ii. as to the chance that, as the Respondent submits, the Appellant could one day become no longer eligible to hold the office of FAT President, as a result of criminal sanctions, the Panel finds this to be remote speculation, whose occurrence is subject to a number of assumptions, which exclude its current relevance.

### 3.4 Scope of the Panel’s Review

108. According to Article R57 of the Code,
- “the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. ...”.*

### 3.5 Applicable Law

109. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

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<sup>16</sup> In addition to the issue of the inadmissibility of appeals against the decisions of the Appeal Committee: the matter has already been considered (and denied) above, at § 103.

110. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute

*“... according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

111. The applicable regulations are, for the purposes of Article R58 of the Code, the rules and regulations of FAT, and chiefly the 2013 Statutes and the Electoral Code. As the seat of FAT is in Bangkok, Thailand, Thai law applies subsidiarily.

112. The portions of the rules of FAT which have been invoked or are relevant in this arbitration include the following:

i. from the 2013 Statutes:

#### **Article 2 Definitions**

*Official All board members, committee members, candidates for all the FAT positions, coaches, referees, assistant referees, and all individuals who have responsible for technical, medical and administrative matters for FIFA, confederations, leagues, and clubs.*

*Member A natural or legal person that has been admitted into membership of FAT by Congress*

#### **Article 7 Conduct of bodies and Officials**

*Members, Executive Committee, Board members, and officials of FAT must observe the Statutes, regulations, directives, decisions and the Code of Ethics of FIFA, AFC, and FAT.*

#### **Article 10 Admission and membership status**

1. *The Members of FAT are natural or legal people who represent the followings:*
  - a. *Clubs in the Thai Premier League;*
  - b. *Clubs in Thai Division I;*
  - c. *Clubs in Thai Division II;*
  - d. *Teams or clubs that complete in King's Cup B, C, and D. ...*

#### **Article 13 Members' rights**

1. *FAT Members have the following rights:*
  - a. *To take part in the Congress of X, to know its agenda in advance, to be called to the Congress within the prescribed time;*
  - b. *To draw up proposals for inclusion in the agenda of the Congress;*
  - c. *To nominate candidates for FAT Executive Committee;*
  - d. *To be informed of annual FAT affairs;*
  - e. *To take part in competitions under the FAT administration;*
  - f. *To exercise all other rights arising from Statutes and regulations of FAT.*

#### **Article 14 Members' obligations**

1. *FAT Members have the following obligations:*

- a. *To comply fully with the Statutes, regulations, directives and decisions of FIFA, AFC, and FAT;*
- b. *To validate electoral result and to decide matters concerning FAT;*
- ...
- f. *To communicate to FAT any amendment of its statutes and regulations as well as the list of its officials or persons who are authorized signatories with the right to enter into legally binding agreements with third parties; ...*
- h. *To observe the principles of loyalty, integrity and good sporting behaviour as an expression of fair play through a statutory provision;*
- ...
- k. *To comply fully with all other duties arising from the Statutes and other regulations of FIFA, AFC, and FAT.*

## **Article 20 Bodies**

- 1. *The Congress is the supreme and legislative body.*
- 2. *The Executive Committee is the executive body.*
- 3. *Standing and ad-hoc committees shall advise and assist the Executive Committee in fulfilling its duties. Their duties, composition and function are defined in these Statutes and/or special regulations drawn up by the Executive Committee.*
- 4. *The general secretariat is the administrative body.*
- 5. *The judicial bodies are the Disciplinary Committee and the Appeal Committee.*
- 6. *The bodies of X shall be either elected or appointed by FAT itself without any external influence and in accordance with the procedures described in these Statutes.*

## **Article 21 Composition of the Congress**

- 1. *The Congress is the meeting at which FAT Members convene in compliance with the Statutes. It represents the supreme and legislative authority of FAT. Only a Congress that is convened in compliance with the Statutes has the authority to make decisions.*
- 2. *A Congress may be an Ordinary or Extraordinary Congress.*
- ...

## **Article 22 Delegates and votes**

- 1. *The Congress is composed of 72 delegates:*
  - a. *One delegate from each of the 18 clubs in the Thai Premier League, each of which has one vote. (18 votes total)*
  - b. *One delegate from each of the 18 clubs in the Thai Division I League, each of which has one vote. (18 votes total)*
  - c. *One delegate from each of the top five clubs in each of the six Thai Division II Regional Leagues, each of which has one vote. (30 votes total)*
  - d. *One delegate from each of the top two clubs from Majesty tournament Cup B, C, and D. (6 votes total)*
- 2. *Delegates must belong to the Member that they represent and be appointed or elected by the appropriate body of that Member. They must also be able to produce evidence of this upon request.*

3. *Each delegate of the same category of member has an equal number of votes in the Congress. Only the delegates present are entitled to vote. Voting by proxy or by letter is not permitted.*
4. *The Executive Committee and the General Secretary shall take part in the Congress without voting rights. During their terms of office, members of the Executive Committee may not be appointed as delegates for their association.*
5. *Congress' agenda shall be determined by the FAT Executive Committee with the approval of the Congress.*

### **Article 23 Area of authority**

*The Congress has the following authority;*

1. *Adopting or amending the Statutes; ...*
3. *Electing the President, the vice-presidents, and members of the Executive Committee of FAT; ...*

### **Article 26 Elections**

1. *Elections shall be conducted by secret ballot.*
2. *FAT election shall comply with FAT Electoral Code drafted by the Executive Committee and approved by the Congress.*
3. *For a person to be elected, an absolute majority (50%+1) of the votes is necessary in the first ballot.*
4. *If there are more than two candidates for one available position and no candidates have absolute majority of the votes, the candidate that obtains the lowest number of votes is eliminated as from the second ballot until only two candidates are left.*

### **Article 33 Composition**

1. *The Executive Committee consists of 19 members:*
  - *1 President*
  - *5 vice-presidents*
  - *13 members**...*
7. *The members of the Executive Committee may be relieved of duties by the followings:*
  - 7.1 *Death;*
  - 7.2 *Resignation;*
  - 7.3 *Four consecutive absences from Executive Committee meetings;*
  - 7.4 *Third-fourth votes of the Members present and eligible to vote at a Congress.*
8. *When no more than the majority of positions, excluding the position of President, become vacant, the Executive Committee shall consist of the remaining members. When more than the majority of positions become vacant, the Executive Committee shall host an election to fill the remaining positions within 2 months. The remaining members of the Executive Committee shall serve until the end of their terms.*

### **Article 38 President**

1. *The President is the legal representative of FAT.*

2. He is *primarily* responsible for:
  - a. Implementing the decisions passed by the Congress and the Executive Committee through the general secretariat;
  - b. Ensuring the effective functioning of the bodies of FAT in order that they achieve the objectives described in the Statutes;
  - c. Supervising the work of the general secretariat;
  - d. Oversee relations between FAT and FIFA, AFC, and other organizations.

#### **Article 39 Candidates for the office of the President**

1. The President shall be elected in the Congress with the presence of at least 50 Members and by the majority of Members eligible to vote.
2. Only Members of FAT may propose candidates for the office of President. Members shall notify the general secretariat in writing of the name of a candidate for the presidency of FAT at least 30 days before the date of the Congress.
3. The general secretariat shall notify the Members of the names of the proposed candidates at least 15 days before the date of the Congress.
4. The President shall hold the office for 4 years from the day of the election and shall carry out his duties after the Congress. The President may be relieved from his duties for the following reasons:
  - a. Death;
  - b. Resignation;
  - c. Four consecutive absences from Executive Committee meetings;
  - d. Third-forth votes of the Members present and eligible to vote at a Congress.
5. In case the President has been relieved from his duties, vice-presidents will take over those duties until the election.

#### **Article 40 Representation and signature**

*The President is entitled to sign for FAT. In case of President's absence, the Executive Committee shall appoint at least two members to sign on his behalf.*

#### **Article 60 General secretariat**

*The general secretariat shall carry out all the administrative work of X under the direction of the General Secretary.*

#### **Article 61 General Secretary**

1. The General Secretary is the chief executive of the general secretariat.
2. The General Secretary shall be appointed by the Congress and the Executive Committee.
3. The General Secretary shall be responsible for:
  - a. Implementing decisions passed by the Congress and Executive Committee in compliance with the decisions of Congress and the President's directives;
  - b. Attending the Congress, meetings of the Executive Committee, Emergency Committee, and ad-hoc committees;
  - c. Organizing the Congress and meetings of the Executive Committee;
  - d. Compiling the minutes for the meetings of the Congress, Executive Committee, Emergency



- Committee, ad-hoc committees, and other bodies;*
- e. Managing and keeping the accounts of FAT properly;*
- f. Serving as the correspondence for FAT;*
- g. Communicating with the Members, the Executive Committees, standing Committees, FIFA, and AFC;*
- h. Appointing and dismissing staffs working in the general secretariat;*
- i. Proposing managerial staff to the President.*

4. *The General Secretary may not be a Congress delegate.*

ii. from the Electoral Code:

### **Article 3 Basic principles**

1. *The electoral committee shall organise and supervises the election process and takes all decisions relating to the election.*
2. *The members of the Committee must under no circumstances be members of the executive body.*
3. *The members of the Committee shall be bona fide members of the association.*
4. *The members of the Committee must immediately decline to give an opinion and withdraw from the matter in progress if they are:*
  - a. a candidate for an elected post,*
  - b. a relative, whether by birth or marriage, of one of the candidates for an elected post,*
  - c. a government official of any kind.*
5. *In the event that a member does not fulfil the above requirements, the member in question shall immediately leave his position and be replaced by a substitute.*

### **Article 4 Election of the electoral committee**

1. *The Committee is elected, in accordance with the provisions of this code, by the general assembly or the body that represents it between congresses for a term of four years at the final ordinary general assembly before the elective general assembly of the executive body. The general assembly or the body that represents it between congresses also elects three substitute members of the electoral committee as well as the three members of the appeal committee and two substitute members of the appeal committee.*
2. *The members of the Committee are not permitted to serve for two consecutive terms.*

### **Article 5 Composition of the electoral committee**

1. *The Committee shall be composed of five (5).*
2. *The Committee comprises:*
  - a. Chairman*
  - b. a deputy chairman*
  - c. three (3) members*
3. *The general secretary of the association serves as the secretary to the electoral committee. He takes part in the activities of the Committee in a consultative capacity, is responsible for the related logistical matters and takes care of administrative matters.*
4. *In the event that one or more members of the Committee stand as candidates for an elected post or*

*are unable to carry out their duties, they shall resign from the Committee. Any member who resigns shall be replaced by a substitute.*

5. *The members of the Committee shall officially declare their candidature for elected posts in such a way as to allow the replacement process described above to be carried out harmoniously and without any time pressure that would be prejudicial to the elections of the executive body.*
6. *Members of the general secretariat may be seconded to the Committee at any time provided that they are not standing as candidates for elected posts.*

#### **Article 6 Duties of the Committee**

1. *The Committee is responsible for all tasks relating to the organisation, running and supervision of the elective general assembly. In particular, it is responsible for:*
  - a. *strictly enforcing the association's statutes and regulations both FIFA and AFC*
  - b. *strictly enforcing the statutes, directives and regulations of the association*
  - c. *strictly enforcing the statutory deadlines for elections*
  - d. *distributing information to the members of the general assembly as well as to government bodies, the media and the public*
  - e. *managing relations with government bodies (where necessary)*
  - f. *managing matters relating to candidates;*
  - g. *organising, in administrative and technical terms, the elective general assembly;*
  - h. *drawing up the list of voters in accordance with the association's statutory provisions;*
  - i. *verifying the identity of the voters under the supervision of the bailiff appointed for this purpose;*
  - j. *the voting procedure;*
  - k. *all other tasks necessary to ensure the smooth running of the electoral process.*
2. *Logistical matters shall be taken care of by the association.*

#### **Article 7 Convoking the Committee and quorum**

1. *Only if the Committee is convoked validly by the chairman of the Committee is it entitled to deliberate and pass decisions.*
2. *A quorum is constituted by the absolute majority of the members of the Committee.*

#### **Article 8 Decisions of the Committee**

*All of the Committee's decisions must be passed by an absolute majority of the valid votes cast. If a vote is tied, the chairman of the Committee shall have the casting vote. Decisions are recorded in minutes signed by the chairman and the secretary of the Committee. Appeals against the Committee's decisions may only be lodged with the appeal committee of the association, to the exclusion of the possibility of appealing said decisions before any other body, particularly a government body.*

#### **Article 12 Appeal procedure**

1. *The appeal committee is constituted of three members and two substitutes elected by the general assembly at the same time as the members of the Committee. One of these members shall have legal training.*
2. *Any appeal, with its reasons, shall be sent by registered post or delivered in exchange for confirmation of receipt to the general secretariat of the association within 4 days of receipt of the*

*Committee's decision.*

3. *Appeals shall be considered by the appeal committee within 4 days of their receipt by the general secretariat.*
4. *The decisions of the appeal committee are final and may not be monitored by any administrative body of the government.*

#### **Article 15 Duties of the Committee**

*The duties of the Committee are as follows:*

- a. *to monitor the voting procedure during the elective general assembly using the electoral register that it has compiled;*
- b. *to count the votes;*
- c. *to take any decision that is necessary regarding the validity or invalidity of ballot papers;*
- d. *in general, to pass a definitive decision on any matters relating to the voting procedure during the elective general assembly;*
- e. *to draft official minutes of the election and distribute them to the members and, where necessary, to government authorities;*
- f. *to declare the official results;*
- g. *to organise a media conference.*

#### **Article 20 General conditions/Decisions in the event of dispute**

2. *In the event of a dispute regarding the validity or invalidity of a ballot paper, the validity or invalidity of a vote, the drafting of the protocol for the count, the declaration of the results or any other matter relating to the counting procedure, the Committee's decision shall be final.*

#### **Article 23 Count and declaration of results**

3. *Once the count has been completed and verified, the chairman shall officially declare the results to the members of the general assembly.*

#### **Article 24 Declaration of final results**

1. *After each round of the election, the chairman of the Committee shall officially declare the results to the members of the general assembly. The minutes are to be drafted and signed by all the members of the Committee.*
2. *The final minutes of the election shall be distributed to the members of the general assembly and to the relevant government bodies. They shall be entered in the record of the deliberations of the general assembly.*

#### **Article 25 Verification of procedure**

*A bailiff or other person of equivalent legal status recognised by the courts shall attend the general assembly and draw up minutes. He is specifically responsible for verifying the identity of the voters and ensuring compliance with the voting procedure.*

#### **Article 26 Violations, archiving of documents, omissions**

1. *Failure by the association to apply the principles of this code shall be considered a serious violation of FAT Statute.*

2. *The Committee shall hand over all the official documents relating to the elections to the association's general secretariat, which is responsible for passing them on to the relevant bodies, where required, and for archiving them.*
3. *All matters relating to the administrative and technical organisation of the elective general assembly that are not covered by this code shall be ruled upon by the Committee.*
4. *All matters relating to the actual running of the elections not covered by this code shall be ruled upon by the Committee.*
5. *The members of the Committee shall observe the utmost impartiality when carrying out their duties.*

### 3.6 The Dispute

113. The object of the dispute, as already underlined, is the electoral process, which started with the adoption of the 2013 Statutes and of the Electoral Code, and concluded with the vote on 17 October 2013 for the new President of FAT (as well as for new Vice-Presidents and new members of the FAT Executive Committee). According to the Appellant, such process, considered as a whole, but also with regard to the individual steps that marked it, was affected by "*irregularities and breaches*" so severe as to justify its setting aside and its repetition in compliance with the applicable rules. Such violations are, on the other hand, denied by the Respondent, which requests that the appeal be dismissed.
114. As a result of the parties' submissions, it is this Panel's duty to verify whether such "*irregularities and breaches*" occurred and whether they are so severe as to justify the setting aside of the entire electoral process at FAT<sup>17</sup>. In that context, the Panel needs to answer the following questions, corresponding to the five groups of "*irregularities and breaches*" identified by the Appellant:
  - i. did "*senior members of the FAT staff*", and chiefly M. and U., improperly interfere with the election process?
  - ii. was the membership of the Appeal Committee unlawfully amended?
  - iii. was "*basic procedural fairness*" absent in the appeal process to the Appeal Committee?
  - iv. did ineligible delegates, being non-members, vote on 17 October 2013?
  - v. did ineligible delegates, being members of the FAT Executive Committee, vote on 17 October 2013?
115. With regard to such questions, and as a general note, the Panel underlines that its duty is to

<sup>17</sup> Another question which was raised is whether the results of the election of the new FAT President were officially declared, in accordance with the applicable regulations. The point is however immaterial, since it does not correspond to a specific claim of nullity by the Appellant and in any case it is undisputed that Makudi prevailed 42 to 28 over Chanpanich. The same conclusion can be reached with regard to the alleged absence of official registration of such results with the Thai authorities. The point, in fact, is invoked by the Appellant as evidence of the purported "*irregularities and breaches*" and not as a reason in itself of nullity of the FAT elections. In addition, the existence of these arbitration proceedings could be seen as an explanation for the delayed registration.

settle a legal dispute according to the law. In other words, this Panel is not called upon (and in any case does not want) to address sports politics (let alone politics *tout court*), even though it is aware that its decision will inevitably have effects on the governance of FAT – a matter which has “political” implications, at least from a sporting point of view. In other words, this award is not, and cannot be construed to be, an endorsement of either of the Candidates who run for President of FAT: it is only about the observance of the rules applicable to, and the impact of such “*irregularities and breaches*”, if any, on, the electoral process.

116. As a result, and in addition, it is not for this Panel to evaluate incidental points, which are outside the scope and purpose of this arbitration. For instance, it is not for the Panel to decide whether the signature of Y. appearing on the witness statement dated 14 December 2013 was forged or not, or whether any of the witnesses was reticent or did not have a clear perception of the obligation to tell the truth when heard at the hearing, or, finally, whether “pressures” have been made on any of the witnesses to convince him to change or withdraw his deposition in this arbitration. Criminal responsibility (a serious point which, if the case, can be examined by the competent authorities) is beyond this Panel’s power of adjudication, which is limited to the assessment of the credibility of the witnesses’ declarations and/or statements.
117. In that context, two additional general points need to be made.
118. The first relates to the burden of proof. The Panel is in fact bound to apply the general rules on the burden of evidence to determine which party should bear the consequences of the failure to prove its allegations.
119. Under such principle, in a CAS arbitration any party wishing to prevail on a disputed issue must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. Such principle has been ordinarily applied in CAS proceedings on the basis of Swiss law (Article 8 of the Swiss Civil Code), but is found to correspond – failing contrary indications under Thai law – to a general principle, applicable as such also in this arbitration.
120. As a result, the Panel submits that the Appellant had the burden to give evidence of the facts on which his claims have been based: the Appellant is claiming that the electoral process at FAT was affected by “*irregularities and breaches*”; therefore, the Appellant had the obligation to prove the factual basis for the finding of such “*irregularities and breaches*”.
121. The second refers to the way the electoral process was conducted.
122. The Panel in that respect finds that the general rules governing the process leading to the election of the FAT President, as contained in the 2013 Statutes and in the Electoral Code, adopted on the basis of FIFA standards and under the FIFA supervision, were rather clear: *inter alia*, electoral bodies (*i.e.*, an electoral committee and an appeal committee) had to be appointed in accordance with Article 4 of the Electoral Code; and the electoral bodies had to be composed of members (and substitutes) that could guarantee, in the conduct of the process, the “democratic principles” of segregation of powers, transparency and publicity (Article 2.1 of the Electoral Code), also on the basis of their personal independence and impartiality (Article 26.4

of the Electoral Code).

123. FAT implemented such process, but introduced a deviation: in fact, the members of the electoral bodies were not elected directly by the FAT Congress, as they should have been according to Article 4 of the Electoral Code; they were appointed by the Candidates on the basis of a mandate granted to them by the Congress, and along a repartition agreed by the Candidates. The Panel understands that this deviation was due to “political” reasons, it was implemented with “good intentions” (in order to pave the way to an electoral process based on consent), and was also approved by the FIFA/AFC delegation which monitored it; in any case, the Panel is not requested to evaluate the legality of that deviation, or the “political” advisability of the agreement reached between the Candidates. It only notes that FAT agreed to the taking over by the two Candidates of the electoral bodies, which became related to them.
  124. In this way, FAT and the Candidates introduced an element which was not present in the rules and, notwithstanding the mentioned “good intentions”, was at the basis of the lack of coordination between the Electoral Committee and the Appeal Committee, and deepened the mutual distrust in the other body’s actions – becoming only a projection of the mutual distrust between the parties, and a *forum* for their “debate”. As it will be seen (§ 139 below), in addition, such departure directly created some of the problems, which are now the object of the dispute between the parties. The Panel holds, as a general note, that, having agreed (if not prompted) such deviation, the Candidates and FAT should accept the consequences it produced.
  125. The questions mentioned above will therefore be examined separately, on the basis of the foregoing indications.
- i. Did “senior members of the FAT staff”, and chiefly M. and U., improperly interfere with the election process?*
126. The first group of “irregularities and breaches” is referred by the Appellant to an alleged “interference” by “senior members” of the FAT staff in the electoral process. More specifically, the Appellant identifies:
    - those “senior members” to be M. (FAT Secretary General) and U. (Secretary of the Electoral Committee); and
    - the alleged “improper interference” to consist, in general terms, in an attempt to manipulate the results of the elections, by misleading the Electoral Committee and exercising powers that were explicitly reserved to the Electoral Committee under the Electoral Code. More specifically, such interference allegedly included<sup>18</sup>:
      - ✓ the refusal of M. and U. to provide the Electoral Committee with contact details for each club;
      - ✓ the issuance by M. of various documents relating to the elections;
      - ✓ the attendance by M. at the meetings of the Electoral Committee and of the Appeal Committee;

<sup>18</sup> The Appellant mentioned also the appointment by M. of members of the Appeal Committee. Since this point was raised by the Appellant also on a specific count, it will be examined in that separate context: see § 138 below.

- ✓ the giving by M. of instructions to U.;
- ✓ the transmission by U. to FIFA of the list of the 65 approved clubs, with the indication that the remaining seven clubs had to file an appeal to the Appeal Committee, notwithstanding the clear different decision of the Electoral Committee;
- ✓ the insistence of U. that the suspended clubs had to appeal directly to the Appeal Committee;
- ✓ the failure of U. to comply with the request of the Chairman of the Electoral Committee to reserve a hearing room for a new hearing on 16 October 2013;
- ✓ the confusion caused by M. and U., which made it impossible for the Electoral Committee to verify many of the photocopied documents<sup>19</sup>, and prevent the Electoral Committee from verifying delegates when they came to vote.

127. Such “*improper interference*” is, on the other hand, denied by the Respondent.

128. Preliminarily, the Panel notes that, as conceded by Chanpanich, any “*interference*”, in order to be relevant (and be discussed) for the purposes claimed by the Appellant, needs to be “*improper*”. As the Appellant maintains, it should consist in an attempt to manipulate the results of the elections, mislead the Electoral Committee and exercise powers reserved to the Electoral Committee under the Electoral Code. In other words, no form of interaction between the electoral bodies of FAT and the senior staff of FAT can *per se* be considered to amount to “*improper interference*”. Actually, the Electoral Code itself provides, at Article 5.3, that “*The general secretary ... serves as the secretary to the electoral committee. He takes part in the activities of the Committee in a consultative capacity, is responsible for the related logistical matters and takes care of administrative matters*”: the interaction between the FAT Secretary General and the electoral bodies is therefore a normal condition in the electoral process.

129. M., however, was, at the time such process took place, not only the FAT Secretary General: he was also a candidate, running for the position of Vice-President in the Makudi camp. As a result of this situation, U. was appointed to serve as the Secretary to the Electoral Committee, replacing M. for such function: this step was considered to be correct also by FIFA, as mentioned in a letter of 10 October 2013 (§ 13 above). M., however, remained in that period, even though being himself a candidate, the Secretary General of FAT. The circumstance that the Secretary General seeks the election to a senior position in FAT is not in itself a violation of any rule, or an element of interference with the activity of the electoral bodies. Indeed, the Panel was not even directed to any rule within the FAT system under which the Secretary General could not exercise the functions related to his office in the period leading to the election at which he was a candidate.

130. As a result, and in summary, in the period leading to the FAT election, U. was to perform the functions in principle entrusted with the Secretary General by Article 5.3 of the Electoral Code;

<sup>19</sup> So that, in the Appellant’s opinion, while the Electoral Committee identified seven clubs with two delegates appointed, “*it may be that many more than seven clubs were represented by delegates who should not have been given the right to vote*”.

M. remained the FAT Secretary General, with the responsibilities described by Article 61 of the 2013 Statutes. This condition is not *per se* an “*improper interference*” with the activity of the electoral bodies.

131. In light of this framework, the specific elements raised by the Appellant to characterize as “improper” the activity of M. and U. appear immaterial.
132. First, the Panel notes that with respect to M. the Electoral Committee took an ambiguous position: on 10 October 2013, its Chairman, L. requested clarifications from FIFA with regard to M.’s involvement in the preparation of the elections; then, the Electoral Committee not only did not object to the participation of M. to its meetings: there is no indication that he was requested to leave; but chiefly, the members of the Electoral Committee requested and expected from him assistance on various points. For instance, at the hearing in this arbitration, B., a member of the Electoral Committee designated by Chanpanich, confirmed that the members of the Electoral Committee requested M. information about the persons mentioned in the various delegate forms and about the clubs in question, and that no check was made whether those delegates were members of the FAT Executive Committee, the role to check the point being of M.
133. At the same time, the Panel notes the deposition of K., who, answering questions about the involvement of M. in the activity of the electoral bodies, indicated that FIFA had always the impression that U. (and not M.) was doing the administrative work: he could not recall receiving phone calls or emails from M. relating to the Electoral Committees’ work.
134. Second, several of the actions (or omissions) attributed to M. and/or U. mentioned by the Appellant do not appear to have materially interfered with the process, and so even conceding their occurrence:
  - i. each of the 72 eligible clubs could be contacted with respect to the presentation of their delegates: M. transmitted delegates forms on 17 September 2013 (§ 9 above), and any inconvenience that such transmission may have created<sup>20</sup> was eventually cured by U., who on 7 October 2013 sent new forms upon the instruction of the Electoral Committee (§ 11 above);
  - ii. the seven suspended clubs were eventually informed of the decision taken on 14 October 2013, and of the hearing of 16 October 2013: indeed, appeals were even filed on 15 October 2013 against the decisions adopted by the Electoral Committee the day before;
  - iii. the purported “*confusion*” created by M. and/or U., as allegedly preventing the Electoral Committee from verifying many of the photocopied documents or to verify the list of the delegates when they came to vote, is pure speculation: indeed, with the exception of the seven suspended clubs, and of two other clubs which wanted to change their delegates, no issue was raised by the other clubs with respect to the appointment of the

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<sup>20</sup> Inconvenience of which no persuasive evidence was offered in the course of these proceedings. In the same way, there is no persuasive evidence that the clubs were not reached by the message sent by U. on 7 October 2013. The fact, then, that the forms were transmitted by email and not by post (as allegedly mandated by the Electoral Committee) is immaterial and does not amount to a breach of any rule.



delegates to an election widely publicized. In addition, no actual issue was raised (with the sole possible exception of the delegate voting for Trang FC: § 151(ii) below) when the votes were cast with respect to the identification of the delegates;

- iv. the failure of U. to reserve a room for 16 October 2013 did not prevent the Electoral Committee from meeting that day;
  - v. in the same way, the alleged insistence of U. that, after the decisions of 14 October 2013, the suspended clubs had to file an appeal to the Appeal Committee did not prevent the Electoral Committee from reconsidering those decisions on 16 October 2013, and reflected indeed a “confusion” within the Electoral Committee. As declared by B. at the hearing, the Electoral Committee did not clearly announce, at a press conference on 14 October 2013, that the suspended club had to file an appeal; the question was, at best, left open. Indeed, B., confirmed on the point by L., mentioned contacts with the suspended clubs on 15 October 2013, and of the request of those clubs (*rectius*: of some of the individuals claiming to be the delegates for those clubs; the “contending” individuals having already filed an appeal) to have the club’s situation re-examined by the Electoral Committee.
135. At the same time, other actions have not been specifically substantiated: for instance, the giving of instructions by M. to U., mentioned by the Appellant, does not appear to involve in itself an improper interference with the activities of the Electoral Committee.
136. Finally, a letter was signed on 16 October 2013 by all the members of the Electoral Committee denying all the accusations against U. contained in an email of the previous day. In such letter, the members of the Electoral Committee confirmed that U. had discharged her duties in accordance with the applicable regulations. At the hearing, indeed, B. declared that such letter was only signed to avoid adverse consequences for U., and did not reflect the reality. It is however a fact that such letter was signed after an open discussion with U. (point confirmed by V. and by M.), and its content leaves no room for interpretation. In addition, the Panel was impressed by the deposition of U. at the hearing, as an objective and reliable witness. On such basis, as well as of the documents on records, the Panel wishes to commend U. for her honest dedication to her duties, notwithstanding the undeserved personal attack she underwent.
137. On the basis of the foregoing, the Panel concludes that senior members of the FAT staff, and chiefly M. and U., did not improperly interfere with the election process.
- ii. *Was the membership of the Appeal Committee unlawfully amended?*
138. The second group of “irregularities and breaches” is referred by the Appellant to the composition of the Appeal Committee, which was changed twice, with respect to the components to be designated by Makudi, in alleged breach of the Electoral Code and of the Candidates’ agreement as to the method for changing its members. More specifically, the Appellant submits that the modification was made by M. (and not by Makudi) and without notification to Chanpanich. Such modification had, in the Appellant’s view, a direct impact on the decisions finally adopted, on 17 October 2013, by the Appeal Committee, which overturned all the adjudications of the Electoral Committee made the previous day: indeed, the Chairman of the Appeal Committee

(Y.) even admitted having been appointed (on 16 October 2013) to help Makudi.

139. The Panel is not convinced by the Appellant's submissions. Though somehow disturbing could appear the replacement of two members of a body just before that body was to take important decisions, the Panel notes:
- i. however extraordinary, and a reason for suspicion, could be the coincidence that two members resigned at the same time for apparently different reasons, no evidence has been provided to prove that the reasons invoked by the resigning members were not genuine;
  - ii. even assuming that those resignations followed a request of Makudi, the possibility to replace previous appointments and designate new members of the electoral bodies was implied in the agreement reached by the Candidates with the consent of FAT: each of the Candidates was granted the possibility to appoint, at his discretion, a given number of members of the electoral bodies; no appointment was initially made (by both Candidates) of alternate members, notwithstanding that the fact had been "flagged out" by FIFA to become a possible issue; it was indicated that in case of a vacancy, that vacancy would be filled by the Candidate who had previously made the appointment; both Candidates made appointments, and replaced the appointed members with new members when the electoral bodies were initially established. Chanpanich agreed to such power: he cannot now blame Makudi (and FAT) for having exercised it.
140. Indeed, the Appellant does not appear to challenge in this arbitration the possibility for Makudi to replace members of the Appeal Committee: only the procedure which was followed for (and possibly the timing of) the replacement is indicated to be unlawful. However,
- i. no sufficient evidence has been given in this arbitration to prove that the Candidates had agreed that (i) the replacements made by one Candidate had to be notified to the other, and (ii) that such notification, if agreed, was a condition for the replacement to be effective. On the point, notwithstanding various indications by some witnesses at the hearing<sup>21</sup>, the Panel is convinced by the deposition of K. With respect to the replacement of the members of the Electoral Committee and of the Appeal Committee, K. in fact confirmed that the issue was raised, but no decision was taken: the side which had appointed the unavailable member would replace that person, and that there was no formal requirement. Even though most of the discussion, at the time the procedure of appointment was agreed, was in Thai, FIFA did not think that either side had to confirm the appointment of the other. The Panel finds it extraordinary that the Candidates could not have informed FIFA on a point so much allegedly discussed. In any case, for the procedure for replacements, no indication was contained in the decision of FAT which granted the right of appointment to the Candidates;
  - ii. the fact that the appointment of the two new members of the Appeal Committee of 16 October 2013 was contained in a letter signed by M. and not by Makudi is not an element making that appointment unlawful. Indeed, also the preceding appointments were

<sup>21</sup> On the point, declarations were rendered, for instance by D. It is to be noted in any case that no witness indicated that the agreement purportedly reached implied that the notification of the replacement was a condition of this replacement to become effective.

confirmed in letters signed by M., and it is undisputed that all such appointments reflected decisions of the Candidates. In any case, even though in a letter signed by M. (who had the official role of Secretary General of FAT, and was therefore discharging his duties), the designations of 16 October 2013 were undoubtedly designations of Makudi.

141. On the basis of the foregoing, the Panel concludes that the membership of the Appeal Committee was not unlawfully amended.

iii. *Was “basic procedural fairness” absent in the appeal process to the Appeal Committee?*

142. The third group of “irregularities and breaches” is referred by the Appellant to the appeal process, and to an alleged lack of “basic procedural fairness” in their conduct. More specifically, the Appellant contends that the Appeal Committee’s decisions were adopted in secret, with no proper hearing, no parties present, on the basis of limited documentation, without proper paperwork and affected by the interference of senior members of the FAT staff, some of whom had vested interests in the decisions.
143. With regard to this point, the Panel preliminarily notes that the criticism raised by the Appellant concerns in essence points of procedure, rather than of merits. In other words (save as relevant under different perspectives: point iv. and v. below), the Appellant does not directly challenge the merits of the decisions adopted by the Appeal Committee, i.e. whether the Appeal Committee properly interpreted the relevant regulations when it decided on the claims submitted by individuals to be recognised to be the proper delegates for a number of clubs.
144. As a result, in light of the scope of the Appellant’s criticism, it is not necessary for this Panel to settle the dispute between the parties, and, before that, between the Electoral Committee and the Appeal Committee, as to the correct criteria for the identification within a club of the person having the right to represent it, and/or to appoint a delegate to represent it, in accordance with Article 22.2 of the 2013 Statutes. Some criteria were indeed adopted by the Electoral Committee on 14 October 2013 (§ 14 above), and the decisions of 16 October 2013 were apparently intended to implement the criteria so set; the Appeal Committee did not follow those criteria, and issued different decisions on 17 October 2013. The dispute in this arbitration, as raised by the Appellant, is in fact not about whether the Appeal Committee correctly applied any criteria for the identification of the correct delegates, but only with respect to the procedure which conducted to the decisions in that regard.
145. Having reviewed the totality of the available evidence, however, the Panel does not agree with the Appellant’s submissions.
146. The Panel notes in fact that no rule in the Electoral Code required hearings before the Appeal Committee to be held in public, a prior notice and the personal attendance of the parties interested in the decision. Indeed, the Panel does not find the specific conditions of the meeting of the Appeal Committee of 17 October 2013 to materially differ from the conditions in which the Electoral Committee met and adopted decisions on 14 October 2013 and on 16 October 2013. In addition, it appears that the Appeal Committee came to a different conclusion only because different weight was given to some of the documents which were already in front of

the Electoral Committee, and chiefly to the declarations of Q., President of the Thai Regional League Division II, with respect to the clubs participating in that league<sup>22</sup>.

147. The decisions of the Appeal Committee of 17 October 2013 were undoubtedly adopted in limited time to prepare them. However, the Panel notes that the problem was created by the Electoral Committee, which took its decisions only in the evening of 16 October 2013 – having considered the case of the suspended clubs and of two other clubs only the day before the elections. And it is not disputed that the decisions of the Electoral Committee of 16 October 2013 were subject to appeal, and that the appeals had to be dealt with before the elections took place. As a result, no blame can be put on FAT for the limited time allowed to the appeals procedure to be conducted: as said, the problem was created by the Electoral Committee, “controlled” by Chanpanich; and Chanpanich, who agreed to the “take-over” by the Candidates of the FAT electoral bodies, has now to accept the consequences of such situation.
  148. On the basis of the foregoing, the Panel concludes that the appeal process to the Appeal Committee was not affected by the absence of basic procedural fairness.
- iv. Did ineligible delegates, being non-members, vote on 17 October 2013?*
149. The fourth group of “irregularities and breaches” is referred by the Appellant to the casting of votes by “ineligible individuals”. In that respect, the Appellant points to Article 22.2 of the 2013 Statutes, which provides that the delegate exercising the voting right of a club has to “belong” to the club in question. In the Appellant’s opinion, nine member clubs (Trang FC, Nara United, Nonthaburi FC, Singhtarua FC, Rayong United FC, Luk-E-San Thai Airways, BEC Tero Sesana, Surin City FC and PTT Rayong) had their votes cast by individuals who were not their members and/or who had no connection with them. As a result, the Appellant submits, none of those votes should have counted.
  150. With respect to this point, the Panel notes the following:
    - i. three of the nine clubs in question were in the group of the clubs which had their voting rights suspended on 14 October 2013, allocated on 16 October 2013 and re-allocated on 17 October 2013: Surin City FC, Trang FC and Luk-E-San Thai Airways;
    - ii. two of the nine clubs in question, however not “suspended” on 14 October 2013, were the object of the decisions of 16 October 2013 and of 17 October 2013: Nonthaburi FC and Rayong United FC;
    - iii. the other four clubs had their delegates considered on 14 October 2013, and were not the object of the subsequent decisions of the Electoral Committee (16 October 2013) and of the Appeal Committee (17 October 2013): Nara United, Singhtarua FC, BEC Tero Sesana and PTT Rayong.

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<sup>22</sup> Compare on the point § 24 and § 77(xix) above. The other criticism raised by the Appellant (i.e. that the process before the Appeal Committee was affected by the interference of senior members of the FAT staff) has already been dealt with above.

151. With regard to the first group of three clubs, the Panel remarks that:

- i. Surin City FC had its vote cast by DD. The Electoral Committee on 16 October 2013 had granted the vote to A., because he was recognized to be the “*club’s owner and general manager*”, and not to DD., appointed as delegate by CC., the “*club’s president*”. Such decision was reversed by the Appeal Committee on 17 October 2013, which recognized to CC. the power to appoint a delegate, i.e. DD. When such decisions were adopted and then the vote cast, no issue was apparently raised with regard to the involvement with Surin City FC of DD., who had already been named to be his delegate<sup>23</sup>. In addition, the criticism raised against DD. appeared more linked to his executive position within FAT, rather than to his lack of relations with Surin City;
- ii. Trang FC had its vote cast by EE. The Electoral Committee on 16 October 2013 had granted the vote to G., as appointed by some board members of the club, over EE., as appointed by S., the “*club’s president*”. Such decision was reversed by the Appeal Committee on 17 October 2013, which granted S. the right to vote. Such vote was in the end cast by EE., originally appointed by S. as the club’s delegate. The point, confirmed by U. at the hearing, was not raised as an issue at the time of the vote. In the same way, no issue was apparently raised with regard to the involvement with Trang FC of EE., when the decisions of the electoral bodies were adopted;
- iii. Luk-E-San Thai Airways had its vote cast by HH. The Electoral Committee on 16 October 2013 had decided not to grant the vote to any delegate; the right to vote of HH. was then confirmed by the Appeal Committee on 17 October 2013. Such decision was adopted unanimously – i.e., also with the vote of the member appointed by Chanpanich, who did not raise any objection on the point, finding all documents to be in order.

152. With regard to the second group of two clubs, the Panel remarks that:

- i. Nonthaburi FC had its vote cast by II., *i.e.* by the individual mentioned in the list of 65 eligible clubs which had their delegates approved by the Electoral Committee on 14 October 2013, only to be replaced with another delegate by the Electoral Committee on 16 October 2013. No issue was at the time raised with regard to the involvement with Nonthaburi FC of II.;
- ii. Rayong United FC had its vote cast by JJ., *i.e.* by the individual mentioned in the list of 65 eligible clubs which had their delegates approved by the Electoral Committee on 14 October 2013, only to be replaced with another delegate by the Electoral Committee on 16 October 2013. No issue was at the time raised with regard to the involvement with Rayong United FC of JJ.

153. With regard to the third group of four clubs, the Panel remarks that they were all included in the list of the 65 clubs which had their delegates approved by the Electoral Committee on 14

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<sup>23</sup> On the other hand, doubts could be cast with respect to the possibility for A. to appoint delegates, as his position within Surin City FC at the time of the FAT elections is not clear: see his deposition at § 77(ii) above. The Panel, however, as mentioned at § 144, does not need to address the issue (with respect to Surin City FC or to any other club) as to whether the decisions of the Electoral Committee or of the Appeal Committee were correct from a substantive point of view.

October 2013, and listed in a document transmitted to FIFA on 15 October 2014. In other words they had their votes cast by individuals approved by the Electoral Committee: OO. voted for Nara United, NN. voted for Singhtarua FC, Makudi voted for BEC Tero Sesana, and MM. voted for PTT Rayong. At that moment, no issue was raised with regard to their involvement with the respective clubs.

154. In light of the above, and in summary, the Panel finds that:

- i. the Appellant cannot challenge the position of those delegates who were not the object of a decision of the Appeal Committee, but only of the Electoral Committee (four clubs: § 153) as well as of those delegates in whose respect the Appeal Committee, overturning the decision of 16 October 2013, reinstated the original decision of the Electoral Committee of 14 October 2013 (two clubs: § 152): Chanpanich, who “controlled” the Electoral Committee following the “take-over” of the electoral bodies by the Candidates, has to accept the consequences of a situation he accepted;
- ii. a possible point could remain only for the remaining three other clubs. However insufficient would be that number of votes, even conceding that they were affected by an irregularity, to overturn the result of the elections, the Panel is not convinced by the evidence presented that the appointed delegates did not belong to the club they voted for. The Panel is led to this conclusion also by the lack of discussion on the point at the time the appointments of those delegates were discussed within the electoral bodies, and by the lack of persuasive evidence as to who “belonged” to a club or not.

155. On the basis of the foregoing, the Panel concludes that the election of 17 October 2013 was not affected by the voting by delegates ineligible because non-members of the club they voted for.

*v. Did ineligible delegates, being members of the FAT Executive Committee, vote on 17 October 2013?*

156. The fifth group of “irregularities and breaches” is also referred by the Appellant to the casting of votes by “*ineligible individuals*”. In that respect, the Appellant points to Article 22.4 of the 2013 Statutes, under which the members of the Executive Committee, during the term of their office, may not be appointed as delegates “*for their association*”<sup>24</sup>. The Appellant submits that, notwithstanding such prohibition, nine members of the Executive Committee (Makudi, DD., MM., R., KK., LL., P., T. and AA.) voted at the elections, and that none of those votes (cast on behalf of BEC Tero Sesana, Surin City FC, PTT Rayong, Rachapracha BTU, Bangkok FC, Chang-Mai FC, Lampang FC, Kon Kaen FC and Nakhon Ratchasima FC) should have counted.

157. With respect to this point, the Panel notes the following:

- i. one of the nine clubs in question, Surin City FC, was in the group of the clubs which had their voting rights suspended on 14 October 2013, allocated on 16 October 2013 and re-

<sup>24</sup> The meaning of the reference to “*their association*” contained in Article 22.4 of the 2013 Statutes was also discussed. The Panel finds this reference to simply indicate that the FAT Executive Committee members cannot be appointed to be delegates within FAT – which is the association in which they hold an office. The point is however immaterial for the purposes of the present award.

allocated on 17 October 2013;

- ii. the other eight clubs had their delegates considered on 14 October 2013, and were not the object of the subsequent decisions of the Electoral Committee (16 October 2013) and of the Appeal Committee (17 October 2013).
158. At the same time, the Panel remarks that the Respondent filed in this arbitration copies of the resignations, dated 10 October 2013 (save as for one, dated 8 October 2013), signed by the members of the Executive Committee in question, and that discussions had taken place (at least with respect to Makudi) when, on 14 October 2013, the list of the delegates was considered at the Electoral Committee's meeting of 14 October 2013: L. was clear on the point when heard at the hearing, and his declarations match those of U. and of M. As a result, the Panel is satisfied that the members of the Executive Committee actually resigned before a decision was taken by the electoral bodies with respect to their appointment as delegates<sup>25</sup>.
159. The Appellant, however, disputes those resignations under two additional points of view.
160. The first is based on Article 85 of the Civil and Commercial Code of Thailand and related to the declarations of E. As a result of such provision, any changes in the executive committee of entities such as FAT would have to be registered within 30 day: since the resignations were not registered, they were not effective.
161. The Panel finds the point raised by the Appellant to be unconvincing. Indeed, the Panel did not have the benefit of exhaustive submissions on Article 85, which was only indirectly referred to by the Appellant in his written pleadings, and notes the possibility of diverging interpretations of that rule, as conceded by E., who confirmed that SAT had ratified the FAT election, having different views regarding Article 85. In any case, the Panel finds in the 2013 Statutes no provision subjecting to registration with any Thai authority the effect of resignations for the purposes internal to FAT, and chiefly with regard to Article 22.4. On the contrary, Article 33 of the 2013 Statutes makes it clear that resignation (without further formalities) ends the term of office of an Executive Committee member, in the same way as under Article 39.4 the resignation of the FAT President "relieves" him from his duties.
162. The second refers to a possible circumvention of the applicable regulations, implied in resignations just prior to the election.
163. Also this second point, however, appears unconvincing to the Panel, which was not directed to any applicable legal principle, under which, because of the alleged "circumvention", the resignations would be deprived of effects *vis-à-vis* FAT – in other words, that resignation of convenience would have no effects. The fact is that resignations were signed: and no rule in the FAT system prevents former Executive Committee members to be appointed as delegates, even

<sup>25</sup> The contradictory declarations of some of the witnesses heard at the hearing (*e.g.*, of P., who declared having typed by himself a letter which is indeed in front of the Panel as a "filled-in" form), or the discussions whether Makudi moved out of his office after the resignation, are on balance insufficient to reach a different conclusion with respect to the moment in which those resignations were effectively signed.

if they had resigned the day before such appointment.

164. On the basis of the foregoing, the Panel concludes that the election of 17 October 2013 was not affected by the voting by delegates ineligible because members of Executive Committee of FAT.

### 3.7 Summary and Conclusion

165. In summary, the Panel finds:

- i. that senior members of the FAT staff, and chiefly M. and U., did not improperly interfere with the election process (§ 137 above);
- ii. that the membership of the Appeal Committee was not unlawfully amended (§ 141 above);
- iii. that the appeal process to the Appeal Committee was not affected by the absence of basic procedural fairness (§ 148 above);
- iv. that the election on 17 October 2013 was not affected by the voting by delegates ineligible because non-members of the club they voted for (§ 155 above); and
- v. the election on 17 October 2013 was not affected by the voting by delegates ineligible because members of Executive Committee of FAT (§ 164 above).

166. In light of the foregoing, the Panel holds that the reliefs requested by Chanpanich, including those relating to the elections for the Vice-Presidents and the Executive Committee of FAT and those submitted “*in the alternative*” (§§ 87 and 88 above), cannot be granted. The appeal brought by Chanpanich is to be dismissed in its entirety.

## ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

1. The appeal filed on 7 November 2013 by Mr Virach Chanpanich is dismissed.
2. (...).
3. (...).
4. All other motions or prayers for relief are dismissed.